72 - 1052 No.

# Inthe Supreme Court of the United States

OCTOBER TERM, 1972

ROGERS C. B. MORTON, SECRETARY OF THE INTERIOR, PETITIONER

RAMON RUIZ AND ANITA RUIZ

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE MINTH CIRCUIT

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# In the Supreme Court of the United States

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No.

ROGERS C. B. MORTON,
SECRETARY OF THE INTERIOR, PETITIONER

RAMON RUIZ AND ANITA RUIZ

# PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the Secretary of the Interior, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

#### OPINIONS BELOW

The district court did not write an opinion. The opinion of the court of appeals (App. A, *infra*) is reported at 462 F. 2d 818.

#### JURISDICTION

The judgment of the court of appeals (App. B, infra) was entered on May 31, 1972. A timely petition for rehearing and suggestion of rehearing en banc was denied on August 31, 1972 (App. C, infra). On November 20, 1972, Mr. Justice Douglas extended the

time for the Secretary of the Interior to file a petition for certiorari to and including January 15, 1973, and on January 8, 1973, Mr. Justice Douglas granted a further extension to and including January 28, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

#### QUESTION PRESENTED

Whether the Secretary of the Interior is required to provide general assistance benefits to Indians throughout the United States, contrary to the Secretary's established policy (on which Congress has based appropriations of funds) limiting such benefits to Indians and Indian families living on reservations in the United States or living in jurisdictions regulated by the Bureau of Indian Affairs in Alaska and Oklahoma.

### STATUTES AND REGULATIONS INVOLVED

The Snyder Act, 42 Stat. 208, 25 U.S.C. 13, provides:

The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for the following purposes:

General support and civilization, including education.

For relief of distress and conservation of health.

For industrial assistance and advancement and general administration of Indian property.

For extension, improvement, operation, and

maintenance of existing Indian irrigation systems and for development of water supplies.

For the enlargement, extension, improvement and repair of the buildings and grounds of existing plants and projects.

For the employment of inspectors, supervisors, superintendents, clerks, field matrons, farmers, physicians, Indian police, Indian judges, and other employees.

For the suppression of traffic in intoxicating

liquor and deleterious drugs.

For the purchase of horse-drawn and motorpropelled passenger-carrying vehicles for official use.

And for general and incidental expenses in connection with the administration of Indian affairs.

The Appropriation Act for the Department of the Interior and related agencies for fiscal year 1968, Public Law 90–28, 81 Stat. 59, 60, provides in pertinent part:

## BUREAU OF INDIAN AFFAIRS

## EDUCATION AND WELFARE SERVICES

For expenses necessary to provide education and welfare services for Indians, either directly or in cooperation with States and other organizations, including payment (in advance or from date of admission), of care, tuition, assistance, and other expenses of Indians in boarding homes, institutions, or schools; grants and other assistance to needy Indians; maintenance of law and order, and payment of rewards for information or evidence concerning violations of law on Indian reservations or

lands; and operation of Indian arts and crafts shops; \$126,478,000.

66 Indian Affairs Manual provides in pertinent part:

### 3.1 General Assistance

1. Purpose. The purpose of the general assistance program is to provide necessary financial assistance to needy Indian families and persons living on reservations under the jurisdiction of this Bureau and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma.

## .4 Eligibility Conditions.

A. Residence. Eligibility for general assistance is limited to Indians living on reservations and in jurisdictions under the Bureau of Indians in Alaska and Oklahoma.

#### STATEMENT

The facts in this case were agreed upon. Essentially, in 1940 respondents, who are Papago Indians and husband and wife, left the Papago Reservation and moved 15 miles away to Ajo, Arizona, a town populated principally by Papago employes of the Phelps-Dodge Company. In July 1967, some 27 years after they moved to Ajo, the mine in which Mr. Ruiz worked was closed by a strike. It remained closed until March 1968. During the strike Mr. Ruiz applied for Arizona welfare benefits, but as a striker he was

<sup>&</sup>lt;sup>1</sup> The facts are accurately stated in the opinion below (App. ,A infra). We are lodging with the Clerk copies of the Agreed Statement of Facts, which is part of the record.

found ineligible. Respondents then sought federal Indian welfare benefits. After a hearing their claim was denied because neither of them lived on the reservation and they were thus ineligible for such benefits under the criteria specified by the Secretary of the Interior in the relevant provisions of the Department's Indian Affairs Manual (see p. 4, supra).

The district court, without opinion, granted summary judgment for the Secretary. Respondents appealed urging that the Secretary's restrictions on general assistance eligibility are invalid on both statutory and constitutional grounds. The court of appeals, one judge dissenting, reversed. Basing its decision on the Snyder Act, supra, it held "that the Bureau has imposed unauthorized residency restrictions upon the availability of general assistance benefits, in excess of its authority and in contravention of Congressional intent" (App. A, infra, p. 29). The Secretary's petition for rehearing with suggestion of rehearing en banc was denied (App. C, infra).

#### REASONS FOR GRANTING THE WRIT

The court below has incorrectly interpreted the Snyder Act (supra, pp. 2-3) as prohibiting to the long established policy of the Secretary of the Interior in allocating the limited funds available for Indian welfare assistance. By requiring payment of general assistance benefits to a broadened class of persons, the decision below would in effect substantially diminish funds available for the benefit of reservation Indians.

The 1970 census listed the total Indian population of the United States (including Alaska) as 827,091.<sup>2</sup> The Department of the Interior's estimates for 1970 show 477,458 Indians living on or near Indian reservations and in areas under Bureau of Indian Affairs jurisdiction in Oklahoma and Alaska.<sup>2</sup> Expansion of Indian welfare benefits to all Indians in the United States would thus approximately double the population from which eligible recipients would be drawn.

Since 1924 (Act of June 2, 1924, 43 Stat. 253, as amended, 8 U.S.C. 1401), all Indians who were born in the United States have been recognized as American citizens and consequently as citizens of the State in which they reside. Accordingly, all Indians, whether residing on or off a reservation, are entitled to social security and state welfare benefits equally with all other citizens of the State. The benefits at issue in this case are benefits provided by the United States to Indians when state benefits are not avail-

<sup>&</sup>lt;sup>2</sup> United States Department of Commerce, Bureau of Census, 1970 Census of Population, General Population Characteristics, United States Summary PC (1)—B1 table 48. These figures include 8,996 Indians living in Chicago, 12,160 living in New York City and 24,509 living in Long Beach and Los Angeles Metropolitan areas (table 67). The census figures are based on responses which do not refer to any particular definition of "Indian".

<sup>&</sup>lt;sup>2</sup> Estimate of Resident Indian Population and Labor Force Status, March 1970. This figure includes Indians living in counties adjacent to Indian reservations.

<sup>\*</sup>See State ex rel. Williams v. Kemp, 106 Mont. 444, 78 P. 2d 585; Cohen, Handbook of Federal Indian law, pp. 244-245 (1942 ed.); United States Department of the Interior, Federal Indian Law, pp. 285-287 (1958); Wolf, Needed: A System of Income Maintenance for Indians, 10 Ariz. L. Rev. 597 (1968).

able." The policy of the Department of the Interior has been to reserve the limited funds available for such benefits for Indians living on reservations or in areas under Bureau of Indian Affairs jurisdiction in Oklahoma and Alaska.

1. The Snyder Act (supra, pp. 2-3), on which the court of appeals based its decision, provides in broad terms that "[t]he Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States \* \* \*" for various purposes that the Act lists. The list of purposes is comprehensive and is obviously intended to include all activities of the Bureau of Indian Affairs (see pp. 2-3, supra)."

Included in the list of purposes is "general support" which is the subject of this litigation. The basic purpose of the Act is shown by its language to be not an attempt to narrow the broad discretion previously given the Secretary of the Interior over Indian affairs (see pp. 10–12, infra), but simply to serve as an authorization for any appropriation that Congress might subsequently pass.

That this was indeed the purpose of the Act is made clear by its legislative history. H. Rep. No. 275, 67th

<sup>&</sup>lt;sup>5</sup> See Wolf, supra, 10 Ariz. L. Rev. at 608-609.

<sup>&</sup>lt;sup>a</sup> A critic of the Act describes it as follows: "The Snyder Act is a familiar and somewhat distressing occurrence in the history of Indian affairs. As in other instances, Congress enacted a very general measure and left the rest up to the Secretary of the Interior and the BIA." Wolf, supra, 10 Ariz. L. Rev. at 607-608.

Cong., 1st Sess. (1921); S. Rep. No. 294, 67th Cong., 1st Sess. (1921); 61 Cong. Rec. 4659, et seq. As the following excerpts from that history show, the skeletal provisions of the Snyder Act were intended to limit neither the Secretary's authority nor Congress' own subsequent actions in passing appropriations.

As Representative Kelley, a member of the House Indian Affairs Committee and the first to speak after the bill was introduced, explained in speaking before the House sitting as Committee of the Whole, 61 Cong. Rec. 4659-4660:

Mr. Chairman and gentlemen of the committee, this measure simply makes in order the items which have been carried for many years in the Indian appropriation bills. I helped to take a number of these items out of the last Indian bill through points of order, but it was the most futile effort possible, for they were reinserted in the Senate and in the end nothing was accomplished. I am opposed to legislating on the point-of-order principle, where one man can prevent action by the entire body, and therefore I shall not oppose this measure.

This view of the Act's purpose was specifically corroborated and further explained by Representative Carter of Oklahoma, also a member of the Indian Affairs Committee, id. at 4671–4672 (emphasis added):

Mr. Chairman and gentlemen of the Committee, in view of the turn that this debate has taken and the distance it has drifted afield, it might be well enough to call attention of gentlemen to what this bill really does. This bill does not undertake the enlargement or creation of a

single activity which is not now in operation by the Indian Bureau. It simply provides for making certain appropriations in order for activities which have been carried along from year to year by appropriations of money for that year without any specific authorization for the work.

But the difficulty is that no general authorization has been made for many of the Indian Bureau agencies. Like Topsy, "they just growed." An epidemic would break out on some certain reservation and without objection an item would be inserted in the current appropriation bill for its suppression and control. Next. certain Indians would be found wanting to farm but without necessary farming implements and stock, so an industrial item would be inserted and no point of order raised against that. Thus the system grew up, and these different agencies were established by the simple insertion of an appropriation in the annual appropriation act without the passage of any organic act authorizing them.

These appropriations were carried along from year to year as long as the Indian Committee had jurisdiction of appropriations without much friction. But when all appropriations were concentrated in the Committee on Appropriations then the fun began. Before this change the Indian Committee had both legislative and appropriating jurisdiction, and when that committee brought in these unauthorized items points of order were rarely insisted upon because no committee jurisdiction was transgressed and no other committee felt sufficiently aggrieved to kick up the row. When appropria-

tion jurisdiction was taken away from the Indian Committee and the Appropriations Committee brought in their bill carrying those unauthorized propositions that constituted a clear invasion of committee jurisdiction, the Indian Committee rebelled and its membership \* \* \* raised considerable fuss.

Any possible remaining doubt about the Act's purpose was then dispelled in the following colloquy, id. at 4672:

Mr. Andrews. Will this bill do anything more than to prevent points of order on the Indian

appropriation bill?

Mr. Carter. Absolutely nothing else. It does not start a single additional agency in the Bureau of Indian Affairs, it does not enlarge their activities, and does not create any new activities. It does nothing more than protect the committee reporting the bill against the whims and peevishness of some Member attacking the bill. \* \* \*

The court of appeals' conclusion (see App. A, infra, pp. 19-20) that the Snyder Act has the substantive effect of requiring the Secretary not to distinguish between on and off reservation programs is, therefore, unfounded.

2. Title 25 of the United States Code contains most of the permanent laws relating to Indians in general. While the statutes found there contain rather detailed provisions concerning such matters as allotment of tribal lands (25 U.S.C. 331, et seq.), formation of tribal governments (25 U.S.C. 461, et seq.), lease and sale of Indian lands (25 U.S.C. 391, et seq.), and

descent and distribution of trust lands (25 U.S.C. 371. et seq.), there is no such detailed statutory provision for many of the social welfare programs of the Bureau of Indian Affairs. These programs are conducted under the general authorization of the Snyder Act and include the Bureau's law and order programs (25 C.F.R. 11), the Indian Business Development Fund (25 C.F.R. 80), and the general assistance and social welfare program at issue here (66 I.A.M. 3.0: supra, p. 4). It is obvious that in the operation of these programs, the Secretary must devise rules concerning eligibility. His administrative authority to adopt appropriate regulations, while implicit in the Snyder Act, is also explicitly conferred in the Acts of July 9, 1832, 4 Stat. 564, as amended, 25 U.S.C. 2. and of June 30, 1834, Section 17, 4 Stat. 738, 25 U.S.C. 9.

None of the programs operated under the authority of the Snyder Act is designed to benefit directly every American Indian throughout the Nation. For example, the law and order regulations apply only to tribes in which the traditional agencies for enforcement of tribal laws and custom have broken down and for which no adequate substitute has been provided by federal or state law (25 C.F.R. 11.1 (b) and (c)); eligibility for grants from the Indian Business

<sup>&</sup>lt;sup>7</sup> Some social welfare services are provided by the Bureau pursuant to statutes containing more specific and limited authority. 25 U.S.C. 271, et seq. contains detailed regulations on Indian Education, and 25 U.S.C. 305 authorizes the creation of the Indians Arts and Crafts Board. The Adult Indian Vocational Training Act of 1956, 25 U.S.C. 309, authorizes the Secretary to provide a vocational training program for adult Indians living on or near reservations.

Development Fund depends on whether the project is a profit-making enterprise generating jobs for Indians located on or near a reservation (25 C.F.R. 80.41); and eligibilty for the general assistance program itself requires unavailability of general assistance from State, county or local governments, and need, in addition to reservation residency (66 I.A.M. 3.1).

3. If the Court agrees with our view that the Snyder Act is merely an enabling Act, as its language indicates ("The Bureau of Indians Affairs \* \* \* shall direct, supervise, and expend such moneys as Congress may from time to time appropriate \* \* \*"), the relevant inquiry is whether Congress appropriated funds for off-reservation general assistance in the fiscal year at issue. The Appropriation Act itself gives no definition to the scope of the general assistance program. It merely states "[f]or expenses necessary to provide education and welfare services for Indians, either directly or in cooperation with States \* \* \* grants and other assistance to needy Indians \* \* \* \$126,478,000." 81 Stat. 60, see p. 3, supra, for full text of this provision.

The legislative history, however, clearly shows that no monies were appropriated for off-reservation Indian welfare for fiscal year 1968, the year at issue here.\* While congressional debates on the Department of the Interior appropriations for fiscal year 1968

<sup>&</sup>lt;sup>8</sup> Nor was the situation different in recent prior or subsequent appropriation Acts, see discussion, infra.

do not mention general assistance, the hearings before both the House and Senate Committees contain a summary of the Bureau of Indian Affairs' requests for general assistance funds. The requests specify that "General assistance will be provided to needy Indians on reservations who are not eligible for public assistance under the Social Security Act \* \* \* and for whom such assistance is not available from established welfare agencies or through tribal resources." Hearings on Department of the Interior and Related Agencies Appropriations for 1968, H. Subcommittee of the Committee on Appropriations, 90th Cong., 1st Sess., p. 777 (1967), and S. Committee on Appropriations, Hearings, 90th Cong., 1st Sess., p. 695 (1967).

There is no indication in the relevant appropriation Acts or their legislative history that Congress intended to expand the Indian welfare program presented to it in the Department's budget request. Indeed, for fiscal year 1968, the Department sought \$129,478,000 for

The hearings for the preceding five years show identically worded requests. Hearings, S. Committee on Appropriations, 89th Cong., 2d Sess., Vol. 8, H.R. 14215, Part I (fiscal 1967), p. 267; Hearings, H. Committee on Appropriations, 89th Cong., 2d Sess., Vol. 16, Interior Appropriations, Part I (fiscal 1967), p. 255; Hearings, S. Committee on Appropriations, 89th Cong., 1st Sess., Vol. 7, H.R. 6767 (fiscal 1966), p. 653; Hearings, H. Committee on Appropriations, 89th Cong., 1st Sess., Vol. 15, Interior Appropriations, Part I (fiscal 1966), p. 747; S. Committee on Appropriations, 88th Cong., 2d Sess., Vol. 11, H.R. 10433 (fiscal 1965), p. 148; Hearings, H. Committee on Appropriations, 88th Cong., 2d Sess., Vol. 17 (fiscal 1965), p. 775; Hearings, S. Committee on Appropriations, 88th Cong., 1st Sess., Vol. 10, H.R. 5279 (fiscal 1964), p. 70; and Hearings, H. Committee on Appropriations, 88th Cong., 1st Sess., Vol. 16 (fiscal 1964), pp. 843, 844.

Indian education and welfare services, and Congress appropriated only \$126,478,000. Manifestly, Congress had no intention of substantially increasing the scope of existing and proposed service.

Moreover, Congress legislated in the light of the clear provision in the Department's manual limiting welfare payments to reservation Indians. If Congress disapproved of this practice, it could have provided otherwise. But Congress took no such action. Thus its appropriation amounted to a ratification of the Department's clear practice. Cf. United States v. G. Falk

The Bureau of Indian Affairs Welfare Program has been codified in its present manual form since May 12, 1952. It is clear that Congress was well acquainted with the scope of the program. In numerous hearings the scope of assistance was clearly brought out: See Hearings, H. Committee on Appropriations, 86th Cong., 1st Sess., Vol. 12, p. 800, et seq. (1960) on Department of the Interior appropriations, for fiscal 1960, Testimony of Miss Gifford, Assistant Commissioner of Indian Affairs (id: at 801).

"I believe the question comes up concerning Indians living off the reservation and who are in need not for these categories but for other types of assistance. In many cases the States and counties say that those Indians ought to be the responsibility of the Bureau of Indian Affairs; that they do not have sufficient funds to take care of them. We have never included in our request for welfare appropriations funds to take care of the

needs of those Indians living off the reservation."

See, also, S. Committee on Appropriations, 85th Cong., 2d Sess., Vol. 6, H.R. 10746 (fiscal 1959), p. 291, et seq. And in earlier years, see H. Committee on Appropriations, 67th Cong., 4th Sess., pp. 184–185 (1922); S. Committee on Appropriations, 77th Cong., 1st Sess., H.R. 4590, Vol. 3, pp. 160–162, 465–466 (1941); S. Committee on Appropriations, 80th Cong., 1st Sess., H.R. 3123, Vol. 17, pp. 598–599 (1947); S. Committee on Appropriations, 81st Cong., 1st Sess., H.R. 3838, Part I, Vol. 8, pp. 483, 592 (1949); S. Committee on Appropriations, 82d Cong., 1st Sess., H.R. 3790, Vol. 8, p. 372 (1951).

& Brother, 204 U.S. 143, 152; Old Mission Portland Cement Co. v. Helvering, 293 U.S. 289, 293-294.

If the breadth of the class of recipients of federal Indian welfare benefits should be increased—and this is a matter of considerable current debate—the increase should result from an administrative or congressional decision coupled with an increased appropriation by Congress, not from a strained interpretation of a statute having a wholly different purpose.

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

ERWIN N. GRISWOLD, Solicitor General.

Kent Frizzell,
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Attorneys.

JANUARY 1973.

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## APPENDIX A

United States Court of Appeals for the Ninth Circuit No. 25,568

RAMON RUIZ AND ANITA RUIZ, PLAINTIFFS-APPELLANTS v.

ROGERS C. B. MORTON, SECRETARY OF THE INTERIOR, DEFENDANT-APPELLEE

## May 31, 1972

Appeal from the United States District Court District of Arizona

Before: BARNES, MERRILL and KILKENNY, Circuit Judges.

KILKENNY, Circuit Judge:

Ramon and Anita Ruiz, appellants in this cause, are members of the Papago Tribe of American Indians. They reside with one of their children in Ajo, Arizona, some fifteen miles from the Papago Indian Reservation, The Ruiz home is in a section of Ajo known as the "Indian Village," where the community is predominantly of Papago origin.

Appellants left the Papago Reservation approximately thirty years ago to seek employment in the copper mines near Ajo, operated by the Phelps-Dodge Company. Ramon Ruiz worked in the copper mines until they were closed by a strike on July 19, 1967. Unable to obtain other employment, Ruiz sought welfare assistance from the state of Arizona. He was informed by the Pima County Welfare Director, how-

ever, that neither general assistance nor emergency relief from the Arizona Department of Public Welfare was available to striking union members. At the time, the Ruiz family was receiving fifteen dollars per week from the union in the form of strike benefits.

On December 11, 1967, Ruiz applied for general assistance benefits from the Bureau of Indian Affairs [Bureau]. The Bureau notified appellants by letter of December 13, 1967, that such benefits were not available to them. Ruiz appealed to the Superintendent of the Papago Indian Agency, then to the Phoenix Area Director of the Bureau, and was granted a hearing before the latter on January 23, 1968. Under departmental regulations, general assistance benefits are made available only to those Papago Indians living within the boundaries of a reservation." The Ruiz appeal was denied on January 25, 1968. The parties agree that the sole reason for the denial of general assistance benefits to appellants was the fact that they resided outside the boundaries of the Papago Reservation.

On February 19, 1968, appellants brought their action in federal district court to compel payment of general assistance benefits to them. The court, after a hearing on cross-complaints for summary judgment, dismissed the complaint and entered judgment in favor of the Secretary of the Interior. This appeal followed.

<sup>&</sup>lt;sup>2</sup> See, 15 ARS § 46-233(A)(4) [Supp. 1971]; see also, letter of November 8, 1968, from Pima County Welfare Director Ever L. Hanson to appellants' attorneys.

<sup>&</sup>lt;sup>2</sup> 66 Bureau of Indian Affairs Manual 3.1.4(A).

<sup>&</sup>quot;Residence. Eligibility for general assistance is limited to Indians living on reservations and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma."

The Secretary does not raise the issue of mootness on this appeal: in any event, we note that the "continuing controversy"

Appellants contend that the policy of the Secretary and the Bureau is inconsistent with (1) Congressional intent to provide aid for needy Indians, and (2) con-

stitutional due process.

The initial legislative approval of expenditures here characterized as "general assistance," the Snyder Act of 1921, authorized the Bureau, as supervised by the Secretary of the Interior, to expend "such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States. " " [Emphasis supplied] In evaluating the Congressional intent that lay behind this enactment, we keep in mind the rule that statutes are to be given, wherever possible, "such effect that no clause, sentence or word is rendered superfluous, void, contradictory or insignificant." Rockbridge v. Lincoln, 449 F. 2d 567, 571 (9th Cir. 1971); Richards v. United States, 369 U.S. 1, 11 (1962).

The Snyder Act provides that benefits are to be available to Indians "throughout" the United States and, absent persuasive reasons to the contrary, courts will give statutory words their ordinary meaning. Banks v. Chicago Grain Trimmers Ass'n., 390 U.S. 459, 465 (1968). The ordinary meaning of the preposition "throughout" is expansive, and it is not the type of restrictive word Congress would presumably have utilized had it intended to limit general assistance to

limitation on the mootness doctrine applies here. Friend v. United States, 388 F.2d 579, 581 (D.C. Cir. 1967); Women Strike for Peace v. Hickel, 420 F.2d 597, 604 (D.C. Cir. 1969); cf., Quevedo v. Collins, 414 F.2d 796, 797 (5th Cir. 1969).

<sup>· 25</sup> U.S.C. § 13, 42 Stat. 208 (1921).

The preposition "throughout" is defined in Webster's New International Dictionary, 2d Edition, as follows: "All the way from one end to the other of; in or to every part of; during the whole course or period of; as throughout the house; throughout the year."

reservation Indians. There is nothing equivocal about the phrase "throughout the United States," nor do we find anything in the legislative history of the Act that counters its broad thrust.

Although, as the Secretary argues, it is evident that Congress did not intend to create new programs through passage of the Snyder Act, neither did it intend to constrict the Bureau's jurisdiction nor the scope of expenditures already being made by the agency. It is not precisely clear what these earlier expenditures encompassed, but they included general funds for "numerous activities " " undertaken in order to more speedily bring about the civilization of the Indian tribes. \* \* \*"' It is clear, moreover, that the jurisdictional responsibility of the Bureau had traditionally extended beyond the borders of the reservation. The authority of the Commissioner of Indian Affairs substantially pre-dated the establishment of many reservations, and his jurisdictional mandate was sweeping. Congressional interest in the general welfare of those Indian tribes not hostile to the United States was apparent in the period surrounding the creation of the commissioner's office," and was reflected in the broad grant of authority to that office.

<sup>\*</sup>H.R. Rep. No. 275, 67th Cong., 1st Sess. (1921); S.Rep. No. 294, 67th Cong., 1st Sess. 52 (1921).

<sup>&</sup>lt;sup>7</sup> Letter from Acting Secretary of the Interior, E. C. Finney, <sup>9</sup> to Sen. Charles Curtis, Chairman of the Committee on Indian Affairs, August 19, 1921; S.Rep. No. 294, 67th Cong., 1st Sess. 52 (1921).

<sup>\*</sup>The office of Commissioner of Indian Affairs was established in 1832, to have "the direction and management of all Indian affairs, and of all matters arising out of Indian relations. \* \* \* " 4 Stat. 564, 22nd Cong., 1st Sess., Ch. 174 (1832).

<sup>•</sup> Cf., 4 Stat. 564, 22nd Cong., 1st Sess., Ch. 174 § 4 (1832) [prohibition of "ardent spirits" in Indian country]; 4 Stat. 514, 22nd Cong., 1st Sess., Ch. 75 (1832) [making available supplies of smallpox vaccine to the Indian tribes]; 4 Stat. 616, 22nd

This legislative and administrative background supports the reading we have given the statute, applying the ordinary sense of its text. That background indicates Congressional concern extending to the general welfare of all Indians, irrespective of their place of residence. Our duty is to construe the Act in a fashion which best serves the clearly indicated legislative purpose, and we decline to adopt a narrow reading that would counter the wide responsibility that Congress has entrusted to the Bureau. Hudson Distributors, Inc. v. Eli Lilly & Co., 377 U.S. 386 (1964); Federal Trade Commission v. Fred Meyer, Inc., 390 U.S. 341 (1968); Logan Lanes, Inc. v. Brunswick Corp., 378 F.2d 212 (9th Cir. 1967), cert. denied, 389 U.S. 898 (1967). Even if some uncertainty as to the construction of the Act existed, we would be compelled to resolve it in favor of the appellants.10 Statutes, such as the Snyder Act, passed for the benefit of Indians and Indian communities, are to be liberally construed. Rockbridge v. Lincoln, supra: Hopkins v. United States, 414 F.2d 464 (9th Cir. 1969). In light of the foregoing, we conclude that Congress intended general assistance benefits to be available to all Indians, including those in the position of appellants, at the time the Snyder Act was passed.

Congressional action following the Snyder Act illustrates the continuing broad scope of responsibility lodged in the Bureau, with no indication of any de-

Cong., 2d Sess., Ch. 40 (1833) [appropriations for Indian annuities]; 4 Stat. 705, 22nd (Cong., 2d Sess., Ch. 105 (1833) [appropriations of general benefits to "effect certain Indian treaties"].

<sup>&</sup>lt;sup>10</sup> As the Supreme Court has stated in the context of unclear Congressional intent:

<sup>&</sup>quot;Doubtful expressions are to be resolved in favor of the weak and defenseless people who are wards of the nation, dependent upon its protection with good faith." Squire v. Capoeman, 351 U.S. 1, 6-7 (1956).

veloping policy to exclude nonreservation Indians. The House Report on the Johnson-O'Malley Act of 1934," for example, asserted federal responsibility for the Welfare of those Indians intermixed with the general community, and concluded that it would be advantageous to permit certain health and educational services for those Indians to be transferred to state agencies for reasons of economical administration. The transfers were to impose no additional financial burden on the states, since the cost of providing services to the nonreservation Indians would be borne by the federal government. This report had the approval of the Commissioner of Indian Affairs, whose accompanying letter did not indicate any reticence to provide services for these off-reservation groups.12 Later federal action in the area of welfare does not reveal any intent to displace the general assistance system of the Snyder Act, originally available to all Indians. The legislative history of the Social Security

<sup>11</sup> H.R. Rep. No. 864, 73d Cong., 2d Sess. (1934).

<sup>12 &</sup>quot;In many sections of the country there are many people of Indian blood who are so definitely a part of the general population that it is neither necessary nor wise for the Federal Government to deal with them on any segregated plan. In much of this rural area where Indians are living, educational, health, and other facilities are so limited that it is highly desirable for the Federal Government and the several States to combine resources wherever possible. This has been done in the field of education and has resulted in arrangements whereby many Indian children are attending local public schools successfully with whites. \* \* \*

In the case of Indians living in widely scattered communities, we find it extremely difficult to render effective service and cooperative endeavors with State authorities which would help both Indians and whites living in these more isolated areas." Letter of February 26, 1934, from John Collier, Commissioner of Indian Affairs; see H.R. Rep. No. 864, 73d Cong., 2d Sess. (1934).

Act, to illustrate, is silent on that legislation's relationship to the Snyder Act. In sum, neither party has indicated to us a federal act usurping the jurisdiction of the Bureau over Indian welfare, granted in 1832 and reaffirmed by the Snyder Act.

Nor, for that matter, has the agency itself shown a less expansive attitude than Congress toward its jurisdiction in related areas of service. Scholarship funds are available to off-reservation students. General assistance grants are available to those Indians in Alaska and Oklahoma not living on reservations. Loans "to promote the economic development of the borrower" can be obtained by Indians and Indian groups without apparent regard for residency. Health benefits, administered in conjunction with the Public Health Service are made available to off-reservation Indian groups. Various Commissioners of the Bureau have proclaimed, in justifying their budget requests, that agency services extended to Indians on or near reservation, and have used the total

<sup>13 25</sup> C.F.R. § 32.1.

<sup>14 66</sup> Bureau of Indian Affairs Manual 3.1.4(A).

<sup>15 25</sup> C.F.R. § 91.

<sup>&</sup>lt;sup>16</sup> Hearings on H.R. 6767, Before a Subcommittee of the Senate Committee on Appropriations, on Department of the Interior and Related Agencies Appropriations, 89th Cong., 1st Sess., pt. 1 at 999–1001 (1965); cf., 42 C.F.R. § 36.12.

<sup>&</sup>lt;sup>17</sup> E.g., Commissioner Robert L. Bennett, Hearings on H.R. 17354, Before a Subcommittee of the Senate Committee on Appropriations, on Department of the Interior and Related Agencies Appropriations, 90th Cong., 2d Sess., pt. 1 at 368 (1968); Commissioner Philleo Nash, Hearings on H.R. 6767, Before a Subcommittee of the Senate Committee on Appropriations, on Department of the Interior and Related Agencies Appropriations, 89th Cong., 1st Sess., pt. 1 at 637 (1965).

In addition, testimony of various Bureau officials has indicated varying degrees of responsibility for off-reservation Indians. In 1959, Senator Mundt was told that from ten to

Indian population of the United States in citing the number of people their agency serves. Needless to say, the Bureau cannot be permitted to expand and contract its jurisdiction to justify its own purposes at the expense of the group it aids.

Despite the foregoing, the Secretary's position is that Congress was well aware of the agency's limitation of general assistance to reservation Indians, and has acquiesced in agency policy by making appropriations limited to that group. We note that an administrative agency, such as the Bureau, has no

twenty thousand Indians in Los Angeles alone were receiving general assistance, health insurance policies, and other services as part of the Bureau relocation program. Hearings on H.R. 5915. Before a Subcommittee of the Senate Committee on Appropriations, on Department of the Interior and Related Agencies Appropriations, 86th Cong., 1st Sess., at 337 (1959). Indians in other cities, whether part of the relocation program or not, were apparently receiving some assistance. Id., at 338. In 1960, the House Committee on Appropriations was told that the Bureau assumes "some responsibility" for Indians living adjacent to reservations, as well as those on reservations, in its relocation program. Hearing on Bureau of Indian Affairs Budget, Before a Subcommittee of the House Committee on Appropriations, on Department of the Interior and Related Agencies Appropriations, 86th Cong., 2d Sess., pt. 1 at 512 (1960).

<sup>18</sup> Hearings on H.R. 5189, Before a Subcommittee of the Senate Committee on Appropriations, on Interior Department and Related Agencies Appropriations, 85th Cong., 1st Sess. at 284 (1957); Hearings; Before a Subcommittee of the House Committee on Appropriations, on Interior Department and Related Agencies Appropriations, 84th Cong., 2d Sess. at 460 (1956); Hearings, Before a Subcommittee of the House Committee on Appropriations on Interior Department Appropriations [Bureau of Indian Affairs], 82d Cong., 2d Sess., pt. 1, at 202 (1952); Hearings, Before a Subcommittee of the House Committee on

power to create a rule or regulation that is out of harmony with the statutory grant of its authority. Dixon v. United States, 381 U.S. 68, 74 (1965); Brennan v. Stark, 342 U.S. 451 (1952). Even if its position were consistent on the issue of responsibility for off-reservation Indians, there is no support in the statute for the distinction drawn by the agency. In our view, the intent of the Snyder Act is unambiguous, and the agency cannot amend it by regulation. Koshland v. Helvering, 298 U.S. 441 (1936)." Be that as it may, the legislative history does not reveal a clear-cut policy on the part of the Bureau toward offreservation groups. The first formalized notice of its restrictive residence policy appeared on May 12, 1952, with the publication of the Indian Affairs Manual.20 At times, both prior to and following the rule's publication, the Bureau seems to have accepted responsibility for those non-reservation Indians living close to the reservation, excluding only those Indians in large

Appropriations; on Interior Department Appropriations [Bureau of Indian Affairs], 82d Cong., 1st Sess., 264-265 (1951).

<sup>&</sup>lt;sup>19</sup> See Generally I. K. Davis, Administrative Law Treatise, §§ 5.01, et seq. (1958). Professor Davis notes that even long-standing regulations are not immune to scrutiny by the courts. Where an agency had excluded payments under the Social Security Act that the Supreme Court thought were included by Congress, the practice was overturned, as being beyond the limits of administrative interpretation. Social Security Board v. Nierotko, 327 U.S. 358 (1946).

<sup>&</sup>lt;sup>20</sup> 66 Bureau of Indian Affairs Manual 3.1.4.(A). Unlike most of the regulations referred to herein, this residency restriction appears only in the Manual and does not appear in the Code of Federal Regulations. Apparently the agency is of the opinion that this section does not "relate to the public, including Indians." See, Introduction to Bureau of Indian Affairs Manual, § 1.2.

metropolitan centers.<sup>21</sup> At other times, Bureau officials seem to refer only to reservation Indians when discussing the services they offer.<sup>22</sup> By 1966, the Bureau

<sup>21</sup> Hearings on H.R. 10433, Before a Subcommittee of the Senate Committee on Appropriations, on Interior Department and Related Agencies Appropriations, 88th Cong., 2d Sess. 227–228 (1964).

"Senator Bible. How many Indians do you have under your jurisdiction?

Mr. NASH. 380,000.

Senator Bible. How many nonreservation Indians do you

have? Are those just reservation Indians?

Mr. Nash. These are on or near. This would not include, for example, Indians living in Los Angeles, San Francisco, Chicago, Denver, Minneapolis, unless they were brought there as part of our vocational training or relocation programs." [Emphasis added.]

"Senator Bible. \* \* \* where does your jurisdiction rest in that regard? Do you have a measuring stick [with regard to blood].

Mr. Nash. No, sir. Our basis for providing services to an Indian is primarily on real estate. That is, we service those individuals who reside on trust or restricted land, or so close to it that the program of the reservation would be affected by services not performed for that person."

<sup>22</sup> Hearings on Bureau of Indian Affairs Budget, Before a Subcommittee of the House Committee on Appropriations, on Interior Department and Related Agencies Appropriations,

86th Cong., 1st Sess., at 801 (1959):

"Miss Gifford, \* \* \* I believe the question comes up concerning Indians living off the reservation and who are in need not for these categories [areas covered by Social Security] but for other types of assistance. In many cases the States and counties say that those Indians ought to be the responsibility of the Bureau of Indian Affairs; that they do not have sufficient funds to take care of them. We have never included in our request for welfare appropriations funds to take care of

was providing full welfare benefits for certain offreservation groups, denying benefits entirely to other groups, and considering the provision of limited general assistance to still other groups.<sup>23</sup> This confusion over jurisdictional responsibility belies any assertion that there was a well-defined administrative position, known to and approved by Congress.<sup>24</sup> The Bureau

the needs of those Indians living off the reservation." [Emphasis added.]

<sup>23</sup> The Bureau was providing "100 percent of the needs" of an Indian person or family who moved to a new location under the Bureau relocation program. These services could extend up to three years in a state such as California, which had a three-year residency requirement at the time. Contract medical care was available to Indians remote from one of the Bureau facilities. A new program was recommended for offering complete health care services to Indians living in Rapid City, South Dakota, apparently prompted by the inquiries of Senator Mundt.

On the other hand, the Bureau was denying general assistance to Indians who relocated on their own, and presumably those in the category of appellants. Hearings on H.R. 14215, Before a Subcommittee of the Senate Committee on Appropriations, on Department of the Interior and Related Agenciess Appropriations, 89th Cong., 2d Sess., pt. 1, 295–302 (1966).

<sup>24</sup> The confusion over Bureau jurisdiction had not been cleared up as late as 1971. The following colloquy between Senator Bible and Mr. Bruce of the Bureau illustrates:

"Senator Bible. \* \* \* Now what Indians are under your jurisdiction that you have a responsibility for?

First, give the qualifications. I have never been quite sure who qualifies. [Emphasis added.] I have heard one-sixth and one-eighth and one-thirty-second and all kinds. What rule do you use to determine who is under your jurisdiction? Who is under the jurisdiction of the Bureau of Indian Affairs?

Mr. Bruce. American Indians living on reservations, one-fourth degree blood or more living in the United States and Alaska.

is capable of articulating its position on other policy matters for consideration and adoption by Congress.<sup>25</sup> It has not done so here.

Senator Bible. One-fourth degree or more is one of the qualifications. They must also live on a reservation?

Mr. BRUCE. On or near.

## INDETERMINATE DEFINITIONS OF "NEAR"

Senator BIBLE. What does the word "near" mean?

Mr. BRUCE. It is very difficult to define. Near reservation

would be a nearby community. [Emphasis added.]

Senator Bible. Well, half a mile, 1 mile, 5 miles, 100 yards? I am just trying to find out what your jurisdiction is. You have some responsibilities. Now what are you responsible for?

Mr. Bruce. They vary and that is why it is difficult to answer

specifically.

Senator Bible. Well, give me the variable then. From 100

yards up to 10 miles?

Is that defined in a statute anywhere? If I was to become the Commissioner of Indian Affairs, God forbid, how would I know who I had jurisdiction over? They must make some determination.

Mr. Bruce. There is a definition for Oklahoma, and Alaska.

Senator Bible. \* \* \* what do your lawyers tell you is your jurisdiction? Can you go into the heart of Manhattan and find some Indian with one-fourth degree of Indian blood? Do you have jurisdiction over him in the heart of Manhattan?

Mr. Bruce. No, sir; not over Manhattan."

Hearings on H.R. 9417, Before a Subcommittee of the Senate Committee on Appropriations, on Department of the Interior and Related Agencies Appropriations, 92d Cong., 1st Sess., pt. 1, at 751 (1971). See also, House Hearing on the same appropriations, generally.

<sup>25</sup> 66 Bureau of Indian Affairs Manual 3.1.4(B). The problem of duplication between federal and state welfare benefits, or other federal benefits administered by the states had been thoroughly aired, and Congressional approval of the Bureau's

position is readily apparent.

We conclude that the Bureau has imposed unauthorized residency restrictions upon the availability of general assistance benefits, in excess of its authority and in contravention of Congressional intent. In so holding, we do not reach the constitutional due process question raised by appellants, and express no view on the issue of whether Congress could, if it so desired, limit general assistance benefits to reservation Indians.

We hold that, under the circumstances of this case, it was improper for the Bureau to deny general assist-

ance benefits on the basis of residency alone.

The judgment is accordingly REVERSED and remanded to the district court with instructions to enter a judgment in conformity herewith.

MERRILL, Circuit Judge, Dissenting:

I dissent.

The question concerns the reasonableness of the construction effectively placed upon the Snyder Act by the regulation.<sup>26</sup> I do not find that construction to be unreasonable.

standing. See Udall v. Tallman, 380 U.S. 1, 16 (1965). This court has similarly emphasized the deference owing to a regulation promulgated by an agency that is responsible for administration in the sphere in which the regulation operates. See, e.g., Udall v. Battle Mountain Co., 385 F.2d 90, 94-96 (9th Cir. 1967), cert. denied, 390 U.S. 957 (1968).

Here, the regulation of the Bureau of Indian Affairs limiting general assistance benefits to Indians living on reservations (with exceptions for the special cases of Bureau jurisdictions in Alaska and Oklahoma), 66 Indian Affairs Manual 3.1.4(A), was first issued in 1952. The Bureau's policy reflected in the regulation has been repeatedly presented to Congress. See, e.g., Hearings on H.R. 9029 Before Subcom. of Senate Appropriations Comm., 90th Cong., 1st Sess., pt. 1, at 695 (1967); Hearings on Dep't of Interior & Related Agencies Appropriations for 1968 Before Subcom. of House Appropriations Comm., 90th Cong.,

I think it important to note that the statute is simply one authorizing expenditures for the Indians. See S.Rep. No. 294, 67th Cong., 1st Sess. (1921); H. Rep. No. 275, 67th Cong., 1st Sess. (1921); 61 Cong.Rec. 4659, 4668-69, 4671-73, 4675, 4680, 4683-84 (1921). As

1st Sess., pt. 1, at 777 (1967); Hearings on H.R. 14215 Before Subcom. of Senate Appropriations Comm., 89th Cong., 2d Sess., pt. 1, at 267, 298, 301-02 (1966); Hearings on Dep't of Interior & Related Agencies Appropriations for 1967 Before Subcom. of House Appropriations Comm., 89th Cong., 2d Sess., pt. 1, at 255 (1966); Hearings on H.R. 6767 Before Subcom. of Senate Appropriations Comm., 89th Cong., 1st Sess., pt. 1, at 653 (1965); Hearings on Dep't of Interior & Related Agencies Appropriations for 1966 Before Subcom. of House Appropriations Comm., 89th Cong., 1st Sess., pt. 1, at 747; Hearings on H.R. 10433 Before Subcom, of Senate Appropriations Comm., 88th Cong., 2d Sess., at 148 (1964): Hearings on Dep't of Interior & Related Agencies Appropriations for 1965 Before Subcom. of House Appropriations Comm., 88th Cong., 2d Sess., at 775 (1964); Hearings on H.R. 5279 Before Subcom. of Senate Appropriations Comm., 88th Cong., 1st Sess., at 70 (1963); Hearings on Dep't of Interior & Related Agencies Appropriations for 1964 Before Subcom. of House Appropriations Comm., 88th Cong., 1st Sess., at 843-44 (1963). See also Hearings on H.R. 10746 Before Subcom. of House Appropriations Comm., 88th Cong., 1st Sess., at 843-44 (1963). See also Hearings on H.R. 10746 Before Subcom, of Senate Appropriations Comm., 85th Cong., 2d Sess., at 292 (1958); Hearings on Dep't of Interior & Related Agencies Appropriations for 1960 Before Subcom. of House Appropriations Comm., 86th Cong., 1st Sess., at 801 (1959).

That the Bureau has provided assistance in various forms to off-reservation Indians, e.g., through programs offering relocation, educational and health care services, should not alter, in my view, this court's assessment of the Bureau's policy with regard to general assistance benefits. See text and note 2 infra. Nor do I find the majority's discussion of jurisdictional uncertainty on the part of the Bureau to be relevant to the narrower issue presented here as to the limited character of the general assistance program.

such, it is quite naturally stated in the broadest terms and thus allows the Bureau of Indian Affairs to help Indians everywhere in the nation. As one commentator has noted, the Act was "intended merely as an authorization for general appropriations," with the specifics of administration left to the Secretary of the Interior and the Bureau. Wolf, Needed: A System of Income Maintenance for Indians, 10 Ariz.L.Rev. 597, 607-08 (1968).

But the granting of broad authority does not preclude (indeed, it seems to require) reasonable Bureau decisions as to how its limited funds may best be allocated and the drawing of reasonable classifications determining areas of greatest need. It does not to me seem an unreasonable determination that reservation Indians, who apparently have less employment opportunity, see Wolf, supra, at 598, and greater difficulty in obtaining state assistance, see id. at 599–606, 608–09, comprise a category particularly in need of ongoing, general financial assistance, while off-reservation Indians generally are in a better position to fend for themselves. Further, the difficulties of administering a system of general aid, if extended off reservations, would pose substantial problems."

Senate Appropriations Comm., 89th Cong., 2d Sess., pt. 1, at 301-02 (1966); Hearings on Dep't of Interior & Related Agencies Appropriations for 1960 Before Subcomm. of House Appropriations Comm., 86th Cong., 1st Sess., at 801 (1959); Hearings on H.R. 10746 Before Subcomm. of Senate Appropriations Comm., 85th Cong., 2d Sess., at 292-93 (1958); Hearings on H.R. 3790 Before Subcomm. of Senate Appropriations Comm., 82d Cong., 1st Sess., at 372 (1951). General assistance benefits are provided as a residual supplementing other resources and public aid that may be available. 66 Indian Affairs Manual 3.1.3, 3.1.4(B); See Hearings on Dep't of Interior & Related Agencies Appropriations for 1960 Before Subcomm. of

As to the constitutional questions, which the majority found it unnecessary to reach, for the reasons stated I do not regard the classifications drawn as unreasonable and a denial of equal protection. Dan-

dridge v. Williams, 397 U.S. 471 (1970).

Nor do I find merit in appellants' contention that the regulation infringes their right to travel under Shapiro v. Thompson, 394 U.S. 618 (1969). The question there was the right of those who had recently traveled to and established residence in a particular state or the District of Columbia to stand on an equal footing respecting welfare benefits with others similarly situated in their new place of residence. It did not suggest that the travelers could claim benefits equal to those who had chosen to stay behind.

Accordingly I would affirm.

House Appropriations Comm., 86th. Cong., 1st Sess., at 801 (1959). Unlike other types of Bureau assistance, ongoing, general assistance if extended off-reservation would require extensive and continuous participation of Bureau field workers serving individual Indians everywhere.

# APPENDIX B

United States Court of Appeals for the Ninth Circuit. No. 25568; DC No. 2408-Civ

RAMON RUIZ AND ANITA RUIZ, APPELLANTS

ROGERS C. B. MORTON, SECRETARY OF THE INTERIOR,

Appeal from the United States District Court for the District of Arizona.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Arizona and was duly submitted.

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed and remanded with instructions.

A true copy.

Attest: September 7, 1972.

DENNIS R. MATHEWS, Clerk. By S. E. McKeeson, Deputy.

Filed and entered May 31, 1972.

# APPENDIX C

United States Court of Appeals, Ninth Circuit

No. 25568

RAMON RUIZ AND ANITA RUIZ, FOR THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, APPELLANTS

HOGIES C. B. Monton, SECRETARY OF THE INTERIOR ROGERS C. B. MORTON, SECRETARY OF THE INTERIOR, Appeal from the Links District Court for

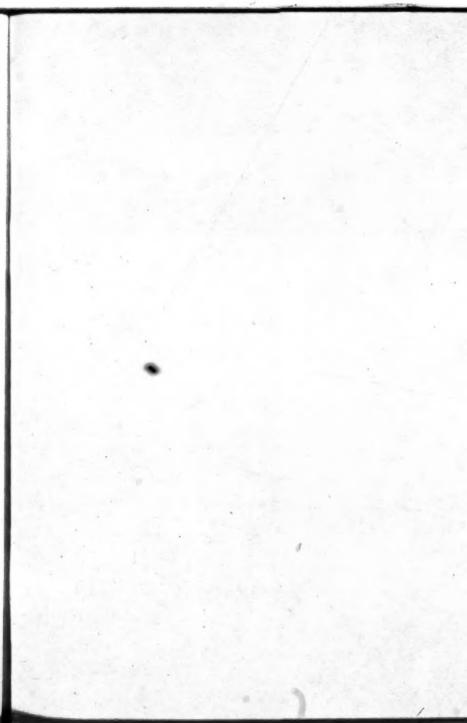
Appeal from the United States District Court This cause equipment of Arizoname ague all I of the Herord from the United States District Court

for the District of Ariz asdao was duly submitted. Before: BARNES, MERRILL and KILKENNY, Circuit and adjudged by this Court, that the judgmessphul

The majority of the panel, as constituted, has voted to deny the petition for rehearing and to reject the suggestion for a rehearing in banc. Judge Merrill would grant a panel rehearing and, in absence thereof, would grant a rehearing in banc.

The full court has been advised of the suggestion for an in bane hearing. Although three members of the Court have requested a vote on the suggestion for rehearing in banc, no Judge has called for a vote in compliance with our General Order 15 (5).

Consequently, the petition for rehearing is denied and the suggestion for a rehearing in banc is rejected.



# APPENDIX

FILED

MARKET AND ASSESSMENT OF THE PARTY OF THE PA

In THE

# Supreme Court of the United States October Texas, 1972; 1973

No. 72-1052

ROGERS C. B. MORTON, SECRETARY OF THE INTERIOR, Political,

RANON RUIS AND ANITA RUIS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE MINTH CERCUIT

# IN THE

# Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1052

ROGERS C. B. MORTON, SECRETARY OF THE INTERIOR, Petitioner,

\_\_v.\_

# RAMON RUIZ AND ANITA RUIZ

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Relevant Docket Entries
Complaint in the nature of mandamus, for judicial review and for declaratory judgment, filed February 19, 1968
Partial administrative record (attachment to complaint)
Memorandum of points and authorities (attachment to complaint)
Administrative record portions not appended to complaint
Answer filed June 7, 1968
Agreed statement of facts, filed November 29, 1968
Motion for summary judgment, filed November 27, 1968
Defendant's memorandum in support of motion for summar judgment
Cross motion for summary judgment, filed June 5, 1969
Plaintiffs' memorandum in support of cross-motion for sur mary judgment

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# IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ARIZONA

Civil Action No. 2408 Tuc.

RAMON RUIZ AND ANITA RUIZ, for themselves and others similarly situated, PLAINTIFFS

228.

STEWART L. UDALL, Secretary of the Interior, DEFENDANT

COMPLAINT IN THE NATURE OF MANDAMUS, FOR JUDICIAL REVIEW AND FOR DECLARATORY JUDGMENT

The plaintiffs respectfully represent as follows:

T

Jurisdiction and venue of this court are invoked under 76 Stat. 744, 28 U.S.C. Sec. 1361 (1965), which authorizes mandamus suits in the United States District Courts; under 80 Stat. 1111, 28 U.S.C.A. Sec. 1391 (1967), which provides for venue in suits against federal officers; under 80 Stat. 392 (1966), 5 U.S.C.A. Sec. 703 (1967), which provides for judicial review of administrative actions; under 62 Stat. 964 (1949), 28 U.S.C. Sec. 2201, 2202 (1956), which provides for declaratory judgments; and under 62 Stat. 931, 28 U.S.C. Sec. 1337 (1965) which provides for jurisdiction over Acts of Congress regulating commerce.

### П

This is an action against Defendant in his official capacity as Secretary of the Interior to obtain an order and judgment of this court requiring Defendant to order completion of proceedings to provide plaintiffs with general assistance benefits, to overrule the administrative decision in this case, and to remove the requirement of the Bureau of Indian Affairs that a recipient of the Bureau's general assistance benefits reside on an Indian reservation.

#### ш

This action is brought on behalf of the Plaintiffs as well as on behalf of each and all other persons similarly situated who are citizens and residents of the United States, American Indians and who are otherwise eligible to receive general assistance benefits under the regulations of the Department of the Interior, to wit, 66 I.A.M. 3.1 (Dec. 30, 1965), but who are denied said assistance and benefits by Defendant or his employees under the residency requirement set out at 66 I.A.M. 3.1.4(A). This class action is brought for the reason that other persons in the class are so numerous as to make it impracticable to bring them all before the Court; and the right of Plaintiffs, which is the subject of this action, is typical of all these persons; the Plaintiffs will adequately and fairly represent and protect the interests of all such persons and there are common questions of law or fact common to Plaintiffs and all such persons. That further, the party opposing the class. Defendant herein. has acted on grounds generally applicable to Plaintiffs and to all such persons as a class.

# IV

Plaintiffs are citizens of the United States, American Indians and members of the Papago Tribe of Arizona. Plaintiffs reside with their minor daughter in Ajo, Arizona.

#### V

Plaintiffs reside at Ajo, Arizona, in a community of Indians commonly known as the "Indian Village." Plaintiffs left the Papago Indian Reservation in 1940 in order to seek employment at the mines in Ajo operated by the Phelps Dodge Company. The mines have been closed by strike since July, 1967, causing great hardship to Plaintiffs.

#### VI

Stewart L. Udall as the Secretary of the Interior, has his office in the District of Columbia, and is charged with supervision of expenditures authorized by 42 Stat. 208 (1921), 25 U.S.C. Sec. 13 (1965), the statute which authorizes welfare payments to Indians. Purporting to act under that statute, Defendant has promulgated regulations pertaining to eligibility for general assistance payments to Indians.

VII

Plaintiffs applied for general assistance benefits from the Bureau of Indian Affairs at Sells, Arizona, on December 11, 1967, and were denied benefits by letter of December 13, 1967. Plaintiffs appealed to the Superintendent of the Papago Indian Agency, and were denied benefits on December 27, 1967. Plaintiffs appealed to the Phoenix Area Director of the Bureau of Indian Affairs and a hearing was held in Ajo, Arizona on January 23, 1968. A final administrative decision denying benefits was rendered January 25, 1968, by the Acting Area Director of the Phoenix Area Office, on the sole ground that Plaintiffs resided outside the boundaries of the Papago Reservation, contrary to the regulations in question.

## VIII

No further administrative appeal is available to Plaintiffs. Plaintiffs have exhausted their administrative remedies by complying with the Department of Interior regulations set out in 66 I.A.M. 3.1.9 (1965).

## IX

Plaintiffs sought welfare assistance from the state of Arizona November 20, 1967, and were denied. No state welfare is available to plaintiffs. But for plaintiffs residence off the reservation, they would be eligible for general assistance from the Bureau of Indian Affairs. Other Indians in similar conditions who reside on reservations in Arizona are given general assistance from the Bureau of Indian Affairs without the necessity of any application for assistance from the state of Arizona.

#### x

The statute authorizing expenditures for welfare payments to Indians is 42 Stat. 208 (1921), 25 U.S.C. Sec. 13 (1965), according to the regulations of the Department of the Interior. This statute states that the expenditures are "for the benefit, care and assistance of the Indians throughout the United States. . ." The Defendant therefore has no authority to limit welfare payments to Indians residing on Indian reservations, and such a limitation is contrary to the intent of Congress, which intent was the alleviation of poverty among Indians throughout the United States.

#### XI

It has been the policy of the Congress and the Bureau of Indian Affairs to encourage Indians to leave reservations to seek better employment opportunities. The residence requirement in question conflicts with this policy, and thus the requirement has no reasonable basis in law or fact.

## XII

Classification of Indians on the basis of residency on Indian reservations to determine eligibility for welfare payments is arbitrary and discriminatory, and is a violation of the due process clause of the Fifth Amendment of the United States Constitution.

#### XIII

The denial of general assistance and other social, educational and financial benefits to Indians because they reside off reservations discourages Indians from leaving reservations or forces their return to reservations to obtain such benefits, and thus impinges on the freedom of travel of Indians, contrary to the due process clause of the Fifth Amendment, and is an abridgement of the privileges and immunities of United States citizenship, and thus prohibited by Article IV, Section 2 of the United States Constitution.

#### XIV

Plaintiffs as American Indians are wards of the federal government regardless of their residency outside the boundaries of the Papago Reservation. Defendant cannot abandon his responsibilities to Plaintiffs merely on the basis that Plaintiffs have taken up residency off the Papago Reservation.

Plaintiffs pray that the court do one or more of the

following:

1. Order the Defendant to order the completion of administrative proceedings to the end that Plaintiffs be granted general assistance payments according to their need, but including payments retroactive to the date of their application for such assistance regardless of their place of residence;

2. Reverse or overrule the administrative decision rendered by the acting Area Director of the Bureau of Indian Affairs on January 25, 1968, insofar as that decision was based on the residency of Plaintiffs off the reservation, and order payment of monies to Plaintiffs;

3. Declare unconstitutional or without Congressional authorization the rule of the Department of the Interior that no Indian may receive general assistance unless he resides on an Indian reservation;

4. Order the Defendant to require the Bureau of Indian Affairs to grant general assistance payments to Indians residing outside Indian reservations where otherwise qualified for such payments;

5. Grant any other and further relief the court may

deem just and proper.

/s/ Ramon Ruiz RAMON RUIZ, Plaintiff

/s/ Anita Ruiz ANITA RUIZ, Plaintiff

## PAPAGO LEGAL SERVICES PROGRAM

/s/ Roger C. Wolf
ROGER C. WOLF
P.O. Box 246
Sells, Arizona 85634
Attorney for Plaintiff

STATE OF ARIZONA ) SS COUNTY OF PIMA )

RAMON RUIZ and ANITA RUIZ, being first duly sworn, depose and say: That they are the plaintiffs in the above entitled action; that the foregoing Complaint has been read to them by their attorney and that they know the contents therein, and that the same is true of their own knowledge, except as to those matters stated upon information and belief, and as to those matters they believe them to be true.

/a/ Ramon Ruiz RAMON RUIZ Plaintiff

/s/ Anita Ruiz ANITA RUIZ, Plaintiff Subscribed and sworn to before me this 16th day of February, 1968, by Ramon Ruiz and Anita Ruiz.

> /s/ Roger C. Wolf Notary Public

My commission expires:
My Commission Expires June 7, 1971

Copy of the foregoing mailed this 19th day of February, 1968, by registered mail, to:

Stewart L. Udall, Secretary of the Interior Department of the Interior Building Washington, D.C. 20240

Mr. W. Wade Head Area Director Bureau of Indian Affairs Phoenix Area Office Box 7007 Phoenix, Arizona 85011

Hon. Ramsey Clark Attorney General of the United States Department of Justice Washington, D.C. 20530

#### ATTACHMENT TO COMPLAINT PARTIAL ADMINISTRATIVE RECORD

RETURN RECEIPT REQUESTED

SOCIAL SERVICES

January 25, 1968

Mr. and Mrs. Ramon Ruiz P.O. Box 849 Ajo, Arizona 85321

Dear Mr. and Mrs. Ruiz:

I have reviewed your application to the Papago Indian Agency for general assistance on December 11, 1967, the denial by the Agency on December 13, 1967, the appeal to the Superintendent, the denial by the Superintendent on December 27, the appeal to the Area Office dated December 28, 1967 with amendment dated January 5, 1968, and the transcript of the hearing conducted by Mr. William C. Newton, Area Social Worker, on January 23, 1968 at Ajo.

According to your statements, you are a resident of the City of Ajo and do not reside on the Papago Reservation. Since the Bureau of Indian Affairs manual 66 IAM 3.1.4A states, "Eligibility for general assistance is limited to Indians living on reservations and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma," it is my decision that you are not eligible for general assistance and that the Papago Indian Agency was correct in denying assistance to you.

Sincerely yours,

/s/ M. L. SCHWARTZ Acting Area Director

cc: Mr. Wolf Supt., Papago Agency FAIR HEARING ON DENIAL OF APPLICATION FOR GENERAL ASSISTANCE BY RAMON AND ANITA RUIZ, AJO, ARIZONA, JANUARY 23, 1968, 10:00 A.M.

# Persons present:

Mr. and Mrs. Ramon Ruiz

Mr. Ignasio, Interpreter

Mr. Roger Wolf, Papago Legal Aid

Mr. Everett Downing, Social Worker, Papago Indian Agency

Mr. William C. Newton, Area Social Worker, Phoenix Area Office

Mr. Dean Krahulec, Supervisory Social Worker, Papago Indian Agency

Mrs. Dorothy Beamis, Secretary, Phoenix Area Office

Newton: I am William Newton. I am the Area Social Worker for the Bureau of Indian Affairs. My job is to develop and operate a welfare program in the Phoenix Area.

Ignasio: Does this include Ajo?

Newton: No, it includes any Indian on reservations in Arizona.

Newton: I would like to discuss with you what we are going to do today. First, that we will ennumerate the points of eligibility. I will talk first about my understanding about where we have gone, where we are at this stage, and Mr. Krahulec will talk briefly about the findings of eligibility from the agency. Then we would like to have a statement from Mr. Ruiz or Mr. Wolf. Then if there is any evidence, and at this point if they wish to use their counsel, their attorney, they are free to do so. We would assume in that connection they will probably want to rely upon Mr. Wolf primarily. I will not here today make a decision but will tell you my recommendations to the Area Director who makes the decision.

The problem here, as I understand it, is that Mr. and Mrs. Ruiz have applied for general assistance and were

found to be ineligible on the basis of residence. I will now ask Mr. Krahulec, Supervisor of Social Services of the Papago Indian Agency, to report the agency's findings.

Krahulec: Application was made by Mr. and Mrs. Ruiz on December 11, 1967 and the information they provided at that time in the agency office in Sells was that they claimed to need financial assistance and also that they did live off reservation. They made their application and were advised then that this would be discussed with the social worker. When this was brought to our attention, a telephone call was made to the Pima County Welfare Department. The reason for our telephone call was because we know the eligibility requirements are such that you would not be eligible because you were off reservation, so we called to see if general assistance through the Pima County would be available to you.

Wolf: A point of clarification. Did you call while they were in the office?

Krahulec: No, this was later. Unfortunately, there was no general assistance available through the county because it would be available only to persons temporarily disabled. We had to deny general assistance to Mr. and Mrs. Ruiz because of their residence which is off reservation.

Wolf: When did you tell them they were ineligible?

Krahulec: By letter on December 13.

Newton: Do you have a statement to make?

Ruiz: Not yet.

Newton: Do you understand the basis for denial?

Wolf: We have been over this.

Newton: This is for clarification of the record, that they do understand the basis for the denial. Let us briefly review some of the facts which you did not bring out, Mr. Krahulec. I understand that Mr. Ruiz has been a miner in Ajo and since last July has been without employment because of the strike.

Wolf: That is correct.

Newton: Would you give me a statement of what your current income is?

Ruiz: All that I have is the union strike benefits.

Newton: What is the amount of it?

Ruiz: \$15.00 a week.

Newton: This is you only income at the present time?

Ruiz: That is all.

Newton: Mr. Krehulec, I understand that you have a statement from the Pima County Welfare Department in writing. Could you read the letter you received from them?

Krahulec: This is a letter written on January 19, 1968 by Margaret Omer, Pima County Welfare Department, to the Papago Indian Agency regarding Mr. Ruiz. It reads, "This is in response to Mr. Krahulec's telephone inquiry of 1/17/68.

"Mr. Ruiz has not made written application for assistance from this Department, but on 11/20/67, on the referral of Mr. Roger C. Wolf, did inquire at the Ajo branch office about the possibility of this Department providing him with \$100.00 for the reported purpose of getting his truck out of legal impoundment from the Phoenix area. "This Department does not have funds available for such purposes, and as Mr. Ruiz is a striking miner with Union membership which provides monthly benefits during strike periods, he is not eligible for Emergency Relief.

"Mr. Ruiz was certified for Surplus Commodities, and referred back to Mr. Wolf for legal counsel on the matter of the impoundment of his truck."

Newton: I requested Mr. Krahulec that we obtain any information from Pima County as to whether there was a formal application for assistance and a formal denial.

Wolf: You consider this a formal denial?

Newton: I do not. There was no formal application made for assistance.

Wolf: Isn't this somewhat moot since there is no program available for him?

Newton: I think this is not a clear one. The general assistance provisions of the State do not seem to provide assistance for an employable person but the emergency assistance provision of the manual lists four priorities within the money available and this case falls into the third priority. And, at the State Board meeting on January 13 an action was taken to reaffirm the emergency program. I have not been able to get a copy of the minutes of that meeting and they have not been published, but I understand the scope of emergency assistance, which includes assistance to employable persons, was broadened.

Wolf: This was long after they applied.

Newton: I mention this because of the fact their manual has four priorities for assistance and number three is assistance to employable persons. This was in affect in December.

Wolf: Disabled?

Newton: This is not disabled. Requirements are residence in the State and eligibility in terms of need.

(Short discussion regarding difference between ADC-Unemployed Persons program and emergency assistance.)

Newton: There are three categories I am thinking of in terms of application. First, general assistance. This is not open to employable persons. The second is emergency assistance—assistance for a limited period to persons who are employable, which includes a family with an employable person. Third, ADC for unemployed persons.

Wolf: This letter you just read said that as a striking union member he would be ineligible.

Newton: Yes, their manual does not so limit them. This would appear to be a local administrative decision. I would expect it to be generally prevailing within the State of Arizona,

Wolf: I didn't want you to say that you will have to go back to Pima County before applying.

Newton: There is no question about what our recommendation. . . . (short discussion)

Newton: Now the Bureau of Indian Affairs manual provides with respect to residence, "Eligibility for general assistance is limited to Indians living on reservations and in jurisdictions of the Indian Affairs in Alaska and Oklahoma." The Area Office and the Papago Indian Agency are required to follow the instructions in the manual. Now, I would like to know whether you have additional evidence or testimony. I have some interpretations—letters that have come from the Secretary of the Interior in relation to this subject which I will share with you, but at this time is there any additional testimony or evidence that you wish to present.

Wolf: Yes, I would like to point out that I called Ajo Welfare myself and talked to a Mr. Berry here in Ajo, Pima County Welfare and he, too, said that they had been in. He said they were ineligible for any welfare from the County Welfare and I might add he said that one bill they had set up for general assistance in Arizona was written in such a restricted way that only three or four people had qualified for it in the last six or eight months and they finally dropped the program. I think it is quite clear. I wish to emphasize there is no State welfare available for these people. They did go to State Welfare and if they were not denied the welfare, they were given no encouragement and sent away and you cannot expect unsophisticated people to make application on written forms, etc., etc., and to fight the State Welfare Department. I hope we don't have any difficulty with you insisting they should go through the gambit of State Welfare appeals and procedures.

Newton: I think this would not be pertinent to our denial. However, I believe that you cannot assume there has been a denial until there has been an application. Let me explain. Just last week a woman, an Apache, applied in Maricopa County for ADC and at the suggestion of the social worker signed a withdrawal of her application, not knowing, however, that in doing so she was withdrawing her application. Therefore, I suggested that always

there should be a formal application and formal denial which then gives the basis for the decision.

Wolf: Isn't this a problem of Pima County rather than my client's lack of desire to ask for welfare?

Newton: Yes, unsophisticated people do not know how to apply.

Wolf: I think the whole discussion of State Welfare is irrelevant to the Bureau of Indian Affairs. For one thing, I understand Bureau of Indian Affairs welfare has often given temporarily while the client's applications are sent to State Welfare.

Krahulec: Pending approval of the application, yes.

Wolf: I think, if anything, it is your problem rather than the client's assuming the need for welfare. In other words, I think that as far as the duty of the Bureau of Indian Affairs to applying for general assistance for my client, the action or antics of the State Welfare Department has nothing to do with this case.

Newton: I think this is the important aspect, a very pertinent aspect because of the fact that all of our premise is based on decision relating to assistance for reservation Indians and limited to reservations, and it is these limits about which we are concerned and these premises were based primarily on the Indian's identification with the rest of the community when he is off reservation.

Wolf: I want to clarify something. Isn't it strictly a geographical rather than identification of Indian in the community?

Newton? I think the thesis on which this was presented is that Indians off reservation are in the same condition as their neighbors who are not Indian and that they, therefore, have no special relationship to the Federal Government when off reservation. This is the thesis on which it is based. Nevertheless, geographical lines do make difference. I have seen situations where a highway divides and makes for ineligibility.

Wolf: Then it really isn't a problem of sense of community?

Newton: No, it is not sense of community. Do you want me to read material we have from the Secretary which relates to this case? Primarily it is interpretation with relation to assistance to reservation residents.

Wolf: When were they written?

Newton: I have two documents here. Both in 1960—March and April 1960. This was written to the Governor of North Dakota and I think it would be appropriate for me to read it at this time. The question of whether you want it translated is up to you.

Wolf: Have you communicated with Washington on this case? They have reviewed it?

Newton: They have supported us fully in the situation and they supplied this additional paper which I could not find in my files.

Wolf: What is it?

Newton: Their comments on a bill which was introduced in Congress to provide assistance to off reservation Indians with one hundred percent Federal funds. Comments on that bill which supports the Congress' constant rejection of all bills to provide assistance to other than those on reservation. This is the thesis on which we continue our practice here.

Wolf: This is a proposal, but did Congress act?

Newton: This letter comments. It did not get to the floor.

Wolf: I think this could be saved and included in your opinion for the Area Director.

Newton: Then I will state that my recommendation to the Area Director will be that the denial of assistance by the Papago Indian Agency was a correct denial because the position of the Bureau of Indian Affairs as cited in the Bureau manual limits eligibility for general assistance to Indians living on reservation. I am not making a decision here. I am making a recommendation to the Area Director that the decision of the Papago Indian Agency is correct because policy limits eligibility to Indians on reservation.

Is there anything further that the Ruizes would like to say or you, Mr. Wolf, insofar as the hearing itself is concerned.

Wolf: I would like to find out whether you have ever established their eligibility other than their residence off the reservation.

Newton: No, we have not. We can proceed with that now if you would like us to do so.

Wolf: It might be helpful.

Newton: Mr. Ruiz, what wage did you earn when you were working for the mine?

Ruiz: \$21.60 per day.

Wolf: Is that gross? Before taxes?

Ruiz: Gross.

Newton: How long did you work with the mine?

Ruiz: Since 1940.

Newton: Did I understand you to say that since July you have had no income except striker's benefits?

Ruiz: That is right.

Newton: \$15.00 per week. Would you tell us about the nature of the credit you get from the company?

Ruiz: \$35.00 per week coupon books for groceries.

Newton: How much do you now owe on that credit?

Ruiz: I haven't figured it out.

Wolf: Since July, \$140 a month would be something in the neighborhood of \$840.00 in six months.

Newton: You have taken full advantage of it?

Ruiz: Yes.

Newton: You support other children? You have in your application at the agency indicated there were three in your family. Is this correct? Your wife, a daughter Mary Ann, born 1953, and that is all. You have been supporting others?

Ruiz: We have been helping the two older boys, one in service, and one married daughter. We help them along.

Newton: These two older boys are not sending any money home?

Ruiz: No. October 23 the younger boy went in the service.

Wolf: Have they given you any money since the strike began to the boys?

Ruiz: About \$50 sent away to the older boy.

Newton: Do you own your own home?

Ruiz: Yes.

Newton: What is the value of your home?

Ruiz: We bought it for \$300. It was two rooms and we have added three more rooms since we got it for \$300.

Wolf: When did you buy it?

Ruiz: 1947.

Newton: Mr. Ruiz, do you own a pickup or car?

Ruiz: The pickup.

Newton: What year is it?

Ruiz: 1963 Chevrolet.

Newton: Is this still impounded?

Ruiz: Yes.

Wolf: I think I should clarify that. They lost his registration plate under the financial responsibility section of the law. I am still helping them get back their registration plate. However, they have had to put their car in

for repairs and the mechanic has a mechanic's lien of close to \$200 on the car and won't release the car until they pay the debt.

Newton: It is not impounded by the police?

Ruiz: That is right.

Wolf: How much do they owe?

Ruiz: \$170 owed.

Wolf: Are they still paying off the contractual sales

chattel mortgage?

Ruiz: Yes.

Wolf: How much do they owe?

Ruiz: Six payments we have to make.

Wolf: Are they behind on their payments?

Ruiz: Yes.

Wolf: Do you need the car for transportation?

Ruiz: Yes. I need it especially now to look around for

a job.

Wolf: How much are these payments they owe?

Ruiz: \$65 a month.

Newton: \$65 a month and owe six payments.

Wolf: Any other debts?

Ruiz: The store and I guess that is all.

Newton: I understand you did not serve in the military.

Ruiz: No.

Newton: Mrs. Ruiz, have you been employed?

Mrs. Ruiz: Two days a week. Newton: Where do you work?

Mrs. Ruiz: Mrs. Counts, a field nurse.

Newton: What is the address of Mrs. Counts?

Mrs. Ruiz: Do not know, probably in the phone book.

Wolf: How much does she make?

Mrs. Ruiz: \$1.00 an hour; four hours a day; two days. \$6.00 a week.

Newton: Do you have any bank accounts?

Ruiz: No.

Newton: Do you have any insurance? Life insurance?

Ruiz: The company gives every employee life insurance.

Newton: Do you know what the face value on that is?

Wolf: I think that is immaterial. The Bureau of Indian Affairs manual states they do not have to turn in a policy.

Newton: We would routinely explore any assets; not with respect to conversion, but to helping families know what their assets are. These are routine questions for us. One of the great problems of Indian clients is they do not understand their net worth and we would like them to understand their net worth as fully as possible.

Do you have cattle or other stock?

Ruiz: No.

Newton: Do you have any cash resources of any kind?

Ruiz: No.

Newton: We do not have your Social Security number and I believe that we should have that.

Wolf: What tally of debts do you have? I have \$1400.

Ruiz: My Social Security Number is 526-22-6570 Ramon

Newton: How long have you lived in your present home? You moved in approximately 1940 and you have lived there ever since?

Ruiz: Since 1947.

Newton: Do you own any property other than your home?

Ruiz: No.

Newton: I think that is all the questions I have relating to eligibility.

Wolf: I might ask one more. I add up your debts \$975 to the company store, \$309 balance owing on your car and \$170 for repairs on your car, which totals \$1,435 in debts. Does that sound right?

Ruiz: That is right. I owe \$400 to the hospital.

Newton: What is the hospital bill for?

Ruiz: Our daughter-in-law was sick in the hospital and we were paying for her bill.

Newton: This is a little surprising.

Wolf: When was that incurred?

Ruiz: Last year.

Wolf: Before or after the strike?

Ruiz: Before the strike.

Wolf: Why did they pay their daughter-in-law's bills? Was the son unemployed?

Ruiz: We are still helping them along. Wolf: That makes \$1,835 in the hole.

Newton: It would appear to me this is not their bill.

Wolf: They probably signed a note.

Newton: Perhaps they did, but one they would not have been required to sign.

Wolf: But it adds to the financial picture.

Newton: Mr. Ruiz, have you had any employment since last July?

Ruiz: No, none.

Newton: Without verification of all these facts, we would not say you would be eligible. I would say, on the basis of the facts as presented, it would appear that with \$21 to \$23 per week income you would be eligible for supplementary assistance, other than with respect to the matter of residence.

Krahulec: Yes.

Newton: That would be eligibility for a supplemental grant if it were not for their residence. They would be eligible for a supplemental grant on the basis of the statements made here. Without verification, it would appear that they would be eligible for supplementary grant to their wages.

Wolf: Do you usually verify this?

Newton: Yes.

Wolf: How long does it take?

Newton: We will not proceed to verify this since they are ineligible. We intend to make a recommendation of ineligibility solely on the grounds of eligibility as to residence and not the record as to eligibility on other grounds. Well, I think this is as far as we would go, as it would seem appropriate to go. Now, is there anything further that you would like to discuss?

Wolf: I have one further thing. How big is your house?

Ruiz: 12 x 12 on three rooms and the kitchen about 10-foot square. Then the bathroom.

Newton: We will present our findings with the recommendation going to the Area Director for affirmation of denial by the agency.

Wolf: Can you tell me when I can expect a written opinion from the Area Director?

Newton: I would assume within a week. I cannot be held to that. I do know that Mr. Schwartz, who is going to review this, is out of town. He is Assistant Area Di-

rector of Community Services and signs all Area Director materials for this branch. It is delegated to him.

Above recorded and transcribed by

(signed) Dorothy W. Beamis DOROTHY W. BEAMIS

#### SOCIAL SERVICES

RETURN RECEIPT REQUESTED

January 25, 1968

Mr. and Mrs. Ramon Ruiz P.O. Box 849 Ajo, Arizona 85821

Dear Mr. and Mrs. Ruiz:

I have reviewed your application to the Papago Indian Agency for general assistance on December 11, 1967, the denial by the Agency on December 13, 1967, the appeal to the Superintendent, the denial by the Superintendent on December 27, the appeal to the Area Office dated December 28, 1967 with amendment dated January 5, 1968, and the transcript of the hearing conducted by Mr. William C. Newton, Area Social Worker, on January 23, 1968 at Ajo.

According to your statements, you are a resident of the City of Ajo and do not reside on the Papago Reservation. Since the Bureau of Indian Affairs manual 66 IAM 3.1.4A states, "Eligibility for general assistance is limited to Indians living on reservations and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma," it is my decision that you are not eligible for general assistance and that the Papago Indian Agency was correct in denying assistance to you.

Sincerely yours,

/s/ M. L. Schwartz Acting Area Director

ce: Mr. Wolf

Supt., Papago Agency

# IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ARIZONA

#### Civil Action No. -

RAMON RUIZ and ANITA RUIZ, for themselves and all others similarly situated, PLAINTIFFS

vs.

# STEWART L. UDALL, Secretary of the Interior, DEFENDANT MEMORANDUM OF POINTS AND AUTHORITIES

- 1. Unconstitutionality of residence requirements for welfare applicants:
  - Harrell v. Tobriner, etc. (Sept. 11, 1967, U.S. D.C. for Dist. Col., No. 1497-67), and cases cited

2) Thompson v. Shapiro, 270 F. Supp. 331 (D.C. Conn., 1967), and cases cited

- Porter v. Graham (No. Cev. 2348 Tuc., U.S. D.C. Ariz., temporary injunction, Jan. 1968), and cases cited
- 2. Equal protection under Due Process Clause of Fifth Amendment:
  - 1) Bolling v. Sharpe, 347 U.S. 497
  - 2) Schneider v. Rush, 377 U.S. 163, 168
- 3. Doubtful expressions of Congress to be construed in favor of Indians:
  - 1) Squire v. Capoeman, 351 U.S. 1, 6 (1956)
  - 2) Carpenter v. Shaw, 280 U.S. 363, 367 (1930)
- 4. Appropriations to Bureau of Indian Affairs not limited to reservations:
  - 80 Stat. 170, 1 U.S. Code Cong. and Admin. News, 195, 196 (1967)

PAPAGO LEGAL SERVICES

/s/ Roger C. Wolf ROGER C. Wolf P.O. Box 246 Sells, Arizona 85684 Attorney for Plaintiffs

# ADMINISTRATIVE RECORD PORTIONS NOT APPENDED TO COMPLAINT

Social Services January 25, 1968

Mr. Roger C. Wolf Directing Attorney Papago Legal Services Program Papago Office of Economic Opportunity P.O. Box 246 Sells, Arizona 85634

Dear Mr. Wolf:

I am enclosing a copy of the decision on the appeal of Mr. and Mrs. Ramon Ruiz for general assistance, a copy of the transcript of the hearing, and copies of the documents Mr. Newton referred to at the time of the hearing.

Sincerely yours,

/s/ M. L. SCHWARTZ Acting Area Director

Enclosures

cc: Supt., Papago Agency

Washington, Social Services

WCNewton:db

(Enclosures were: Transcript of 1/23/68 hearing; copies of letter 1/20/64 to Mr. Aspinall, letter of 4/4/60 to Mr. Mills; and letter of 3/14/60 to Governor Davis) Letter 1/25/68 to Mr. and Mrs. Ramon Ruiz

January 19, 1968

Mr. John H. Artichoker, Superintendent U. S. Bureau of Indian Affairs Papago Indian Agency P. O. Box 578 Sells, Arizona 85634

Attn.: Mr. Dean Krahulec Supervisory Social Worker

> Re: RUIZ, Ramon—b. 3-16-69 Ajo, Arizona

Dear Mr. Artichoker:

This is in response to Mr. Krahulec's telephone inquiry of 1/17/68.

Mr. Ruiz has not made written application for assistance from this Department, but on 11/20/67, on the referral of Mr. Roger C. Wolf, did inquire at the Ajo branch office about the possibility of this Department providing him with \$100.00 for the reported purpose of getting his truck out of legal impoundment from the Phoenix area.

This Department does not have funds available for such purposes, and as Mr. Ruiz is a striking miner with Union membership which provides monthly benefits during strike periods, he is not eligible for Emergency Relief.

Mr. Ruiz was certified for Surplus Commodities, and referred back to Mr. Wolf for legal counsel on the matter of the impoundment of his truck.

We hope this information is of assistance to you.

Very truly yours,

/s/ M. A. Omer (Miss) Margaret A. Omer Administrative Supervisor

MAO:gb

cc: Mr. Dewey Perry

Ajo District Caseworker

#### NARRATIVE

Re: RUIZ, Ramon & Anita P.O. Box 849 Ajo, Arizona

12-11-67

Mr. & Mrs. Ramon Ruiz in office on this date requesting general assistance. They had been referred to Social Services by Mr. Wolf, Attorney for Legal Aid Services. Mr. & Mrs. Ruiz had contacted Mr. Wolf for assistance regarding their pick-up truck in which their son was involved in an accident.

Mr. Ruiz stated they needed assistance since he is not working. The Ajo mine where he is employed is on strike. They get a little money (about \$15.00 every two weeks) but this was not enough to meet their monthly needs. They have a daughter who is an 8th grader in Ajo. The Ruizes said they were living in Ajo but were originally from the reservation. Mr. Ruiz is from San Miguel and Mrs. Ruiz is from South Komelic. They were told that since they lived off the reservation their application will probably not be approved but that we would let them know for sure by letter after their case was discussed with the supervisor who was not in the office at this time.

The Ruizes had been denied by the Pima County Welfare Department for G.A. since Mr. Ruiz did not meet the eligibility requirement of being temporarily disabled.

12-13-67

Case discussed with Dr. Downing who denied the application based on the fact that the Ruizes live off reservation.

BFA/bfa

12-13-67

Letter sent to Mr. Ruiz informing him that his application for GA is denied based on the fact that he lives in the off-reservation city of Ajo, Arizona. DK:dk

1-4-68 SUMMARY OF EVENTS SINCE 12-13-67 On 12-15-67 this worker received a telephone call from Mr. Roger Wolf, Directing Attorney of the Papago Legal Service, regarding the case of Mr. Ruiz. The purpose of his call was to appeal the decision of denial made by our officer on 12-13-67. This worker asked if there have been any changes in the situation of the Ruiz family since their application . . . with special emphasis on his present residence. Mr. Wolf stipulated that there have been no changes and that the family still lives in Ajo, Arizona, which is off-reservation. This worker then denied the appeal on the basis of the original decision. Mr. Wolf requested this worker to arrange for an appeal hearing with the Superintendent of the Papago Agency.

Arrangements were made for an appeal to be heard by the Superintendent. Mr. Wolf suggested that all he needed was a decision based upon the same facts he has already twice submitted to the Branch of Social Services and that the appeal hearing could be handled over the telephone if this would meet with the approval of the Superintendent. Otherwise Mr. Wolf would be pleased to appear in person.

The Superintendent was advised of this information and the case presented to him on 12-27-67. Information regarding the applicant was given to the Superintendent by the Supervisory Social Worker along with the manual showing that (66 IAM 3.1.1. and 66 IAM 3.1.4A) "Eligibility for general assistance is limited to Indians living on reservations and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma." After consideration of the case and the manual requirements the Superintendent denied the appeal. Mr. Wolf, Papago Legal Services, was advised of this decision by copy of the denial letter sent to Mr. Ruiz on 12-27-67. Mr. Ruiz was advised, in the letter, that he has the right to appeal this decision to the Phoenix Area Office.

On 12-28-67, received in this office on 12-29-67, the Papago Legal Services submitted an Administrative Appeal from Denial of Welfare to the Phoenix Area Office. On January 4, 1968, the Area Office advised Mr. Ruiz, by letter, that an appeal hearing will be held at the Indian

Community Hall in Ajo, Arizona, at 10:00 AM on 1-23-68.

Notation: Since 12-11-67 when Mr. Ruiz was in the Branch of Social Service office at the Agency, no worker from this office has seen Mr. Ruiz or any member of his family. We have been conducting all of this business through his attorney, Mr. Wolf. We have been making our decisions based upon the expressed information and stipulation by Mr. Wolf that the family situation remains the same and that they continue to live off reservation in the city of Ajo.

/s/ Dean Krahulec DEAN KRAHULEC:DK Supervisory Social Worker

[SEAL]

### THE PAPAGO TRIBE

PAPAGO OFFICE OF ECONOMIC OPPORTUNITY
LEGAL SERVICES PROGRAM
P. O. Box 246
Sells, Arizona

January 5, 1968

Mr. W. Wade Head Area Director Phoenix Area Office 124 West Thomas Road Phoenix, Arizona

Dear Mr. Head:

Enclosed is an amendment to the Administrative Appeal from Denial of Welfare dated December 28, 1967.

I would appreciate knowing when I can expect a decision on this appeal.

Very truly yours,

/s/ Roger C. Wolf
ROGER C. WOLF
Directing Attorney
Papago Legal Services
Program

RCW/rp Enclosure No.

### RAMON RUIZ, et ux., APPELLANTS

vs.

PAPAGO INDIAN AGENCY, U.S. DEPARTMENT OF INTERIOR,
APPELLEES

FIRST AMENDMENT TO ADMINISTRATIVE APPEAL FROM DENIAL OF WELFARE

The Administrative Appeal from Denial of Welfare in the above captioned case is hereby amended at the fifth line of the second full paragraph, fourth page, by the addition, after the word "payments," of the phrase "retroactive to the date of appellants' original application for assistance (December 11, 1967)".

Subscribed this 5th day of January, 1968, by Roger C.

Wolf, counsel for appellant.

/s/ Roger C. Wolf ROGER C. Wolf Papago Legal Services Sells, Arizona 85634

### RETURN RECEIPT REQUESTED

SOCIAL SERVICES

January 4, 1968

Mr. and Mrs. Ramon Ruiz P.O. Box 849 Ajo, Arizona 85321

Dear Mr. and Mrs. Ruiz:

This letter will acknowledge receipt of the decision dated December 27 by John H. Artichoker, Jr., denying general assistance to you.

You are requested to appear at the Indian Community Hall, Ajo, Arizona at 10:00 a.m. on January 23, 1968 for a hearing on your appeal. Mr. William C. Newton, Area Social Worker, will conduct the hearing.

Sincerely yours,

/8/ M. L. SCHWARTZ Assistant Area Director

ce: Mr. Roger Wolfe, Papago Legal Services Supt., Papago Agency

Washington office, Social Services

WCNewton:db

(Enclosures to Washington copy of incoming and letter of 12-27-67 by Superintendent Artichoker)

[SEAL]

### THE PAPAGO TRIBE

PAPAGO OFFICE OF ECONOMIC OPPORTUNITY
LEGAL SERVICES PROGRAM
P. O. Box 246
Sells, Arizona

December 28, 1967

Mr. W. Wade Head, Area Director Phoenix Area Office 124 West Thomas Phoenix, Arizona

Dear Mr. Head:

Enclosed is the appeal of Mr. and Mrs. Ramon Ruiz from the decision of December 27 by John Artichoker denying general assistance to Mr. and Mrs. Ruiz on the grounds that they reside off the reservation. I would appreciate your prompt consideration of this appeal.

I assume you have received a copy of Mr. Artichoker's

letter to Mr. Ruiz.

Very truly yours,

/s/ Roger C. Wolf ROGER C. WOLF Directing Attorney

RCW/rp

cc. Mr. and Mrs. Ramon Ruiz Mr. Dean Krahulec

Enclosure

No. ---

### RAMON RUIZ, et ux., APPELLANTS

vs.

# PAPAGO INDIAN AGENCY, U.S. DEPARTMENT OF INTERIOR, APPELLEES

### ADMINISTRATIVE APPEAL FROM DENIAL OF WELFARE

On December 11, 1967, Mr. and Mrs. Ramon Ruiz, appellants, of Ajo, Arizona, were denied general assistance payments by the Papago Indian Agency, Sells, on the grounds that appellants, though Papago Indians, did not reside on the Papago Indian Reservation. This was confirmed by letter from the agency to appellant Ramon Ruiz of December 13, 1967. The Departmental Manual makes it clear that assistance programs are not available for Indians living off an Indian reservation. 66 I.A.M. 3.1 (1965).

Appellants applied to Pima County Welfare for assistance in Ajo, Arizona during the week of November 21, 1967. On December 11, 1967, this denial of welfare was confirmed by a Mr. Berry, a social worker with the County Welfare Department in Ajo. (It should be noted that there is no program available in Arizona for general assistance where the father is unemployed. Such a program was begun and halted after only four families were eligible to apply. Informed sources tell me that the program was written in such a way as to exclude the Indians of Arizona.)

Appellants herewith appeal from the decision of the Papago Agency of the Bureau of Indian Affairs on the grounds that the denial of general assistance to them solely on the grounds that they live off the reservation is arbitrary, discriminatory, and a denial of due process of law.

This appeal is authorized by 66 I.A.M. 3.1.9 (1965).

I. Statutory Basis for Welfare Payments to Indians

The statutory basis for provision of financial assistance to Indians is found in the act of November 2, 1921, 42 Stat. 208, 25 USC 13 (1965), according to 66 I.A.M.

Section 101.02 (1952).

This statute authorizes appropriations for the Bureau of Indian Affairs "for the benefit, care, and assistance of the Indians throughout the United States..." (Emphasis supplied.) Nowhere does this statute indicate a limitation of such assistance to Indians who reside on reservations.

### II. Regulations of the Department of the Interior

The Code of Federal Regulations provides only for contracts between state and federal agencies for the provision of welfare. 25 C.F.R. Section 21 (1957).

The Departmental Manual, as stated above, makes it very clear that no assistance is to be provided for any Indians who happen to be residing anywhere off the

reservation. 66 I.A.M. 3.1, 3.4 (1965).

The manual makes no provision for proximity to the reservation as a factor to be considered. Any Indian living over the boundary line is to be denied general assistance regardless of his being a part of the tribal society, economy, or community.

### III. Basis for Challenge of this Decision

1. The regulations do not conform to the wishes of Congress. The statute cited above, 25 U.S.C. Section 13, declares that the money appropriated shall be for Indians "throughout the United States." There is no basis for adding the restriction "provided that said Indians reside on Indian reservations," which is what the regulations do in effect. The regulations are obviously at odds with the statute. The statute clearly means all Indians and no reference to legislative intent or legislative history is required. Webster's Seventh New Collegiate Dictionary, P. 921, defines throughout as "in or to every part: everywhere." Congress could easily have included the condition that the Indian reside on a reservation, but it did not.

Even if the statute could be said to be ambiguous, which it cannot, doubtful expressions in acts of Congress relating to Indians are to be resolved in favor of the Indians. Carpenter v. Shaw, 280 U.S. 363 (1930); Squire

v. Capoeman, 351 U.S. 1 (1956).

2. To predicate eligibility on the basis of residence is a denial of due process and equal protection of the laws. A recent flurry of cases have struck down residency requirements for welfare based on time spent in the jurisdiction. Harrell v. Tobriner, 36 L.W. 2283 (U.S. D.C. Dist. Col., November 8, 1967); Thompson v. Shapiro, 270 F. Supp. 331 (1967); Green v. Dept. of Public Welfare, 270 F. Supp. 173 (1967); and pendente lite in Smith v. Reynolds (USDC E. Pa. 1967). The reasoning in these cases is applicable to the situation in this case.

If a six-month resident is denied the assistance given to one-year residents, in circumstances in which each is otherwise within the requirement of the statute, the former is denied the equal protection of the law, for the clearly different treatment has no reasonable relation to the basic legislative purposes. The disqualifying requirement applicable to plaintiffs thus engrafts upon the legislation an invalid provision. [36 L.W. at 2283.]

That the Bureau of Indian Affairs must exclude offreservation Indians from welfare and other services for the sake of administrative convenience is plainly erroneous. There is no magic in the boundary line of a reservation. Reservations were established to provide the Indians with land, not to provide the Bureau of Indian Affairs a delimited jurisdiction. Other agencies, such as the Public Health Service and the various offices established under the auspices of the Office of Economic Opportunity, have not set up any residence requirements for the beneficiaries of their services.

Furthermore, in the instant case, appellants came to the office of Social Services in Sells, and no trip was necessary to see the appellants off the reservation. Even if it were necessary to visit appellants in Ajo, Arizona, this could be done very easily since Ajo lies on the direct route to another part of the Papago Reservation, Gila

Bend.

In any case, to let the alleviation of poverty of an Indian hinge on the purely administrative convenience of the Bureau of Indian Affairs in Washington is arbitrary and capricious. One suspects that the real reason for the rule in question is to limit the expenses of the Department, which limitation is constitutionally impermissible for a state under Edwards v. California, 314 U.S.

160 (1941).

Harrell v. Tobriner, supra, relies also on another reason for striking down arbitrary residence requirements in welfare cases; this is the subtle impediment to the freedom of travel such requirements create. By cutting off all services for Indians at the border of the reservation, the Bureau of Indian Affairs discourages Indians from leaving the reservation to seek employment, or worse still, forces Indians settled in a community off the reservation to return to the adobe huts they left behind if they are to receive benefits. See the discussion of the freedom of travel in Green v. Dept. of Public Welfare, 270 F. Supp. 173 (1967).

Discriminatory legislation may be of such an arbitrary and injurious character as to violate the due process clause of the Fifth Amendment, Detroit Bank v. United States, 317 U.S. 329. It seems obvious that such discriminatory rule-making exists in this case and in all other like cases. Appellants should be granted general assistance payments and the regulations should be changed to permit off-reservation Indians to receive benefits equally

with their counter-parts on reservations.

Finally, it should be noted that appellants have been effectively denied the right to representation by counsel in this proceeding by the admitted failure of the Bureau of Indian Affairs to provide counsel with a complete, current copy of the regulations covering welfare.

Subscribed this 28th day of December, 1967, by Roger

C. Wolf, counsel for appellant.

/s/ Roger C. Wolf
ROGER C. Wolf
Papago Legal Services
Sells, Arizona 85634

Social Services 720

December 27, 1967

Mr. Ramon Ruiz P.O. Box 849 Ajo Arizona 85321

Dear Mr. Ruiz:

This is to advise that Mr. Roger Wolf, Directing Attorney for Papago Legal Services, presented your appeal for general assistance on December 27, 1967.

The point in question is that your residence continues to be off-reservation in the city of Ajo, Arizon. The Bureau of Indian Affairs Welfare Manual states (66 IAM 3.1.1 and 66 IAM 3.1.4A) that "Eligibility for general assistance is limited to Indians living on reservations and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma."

In view of the fact that your present residence is offreservation we must deny your appeal. If you feel that this decision is unsatisfactory you have the right to appeal this decision to the Phoenix Area Office. If you decide to appeal this decision it will be necessary to do so in writing. The address is:

Area Director
Bureau of Indian Affairs
Phoenix Area Office
P.O. Box 7007
Phoenix, Arizona 85011

Because Mr. Roger Wolf is representing you in this matter we are sending a copy of this letter to his office.

Sincerely yours,

JOHN H. ARTICHOKER, JR. Superintendent

cc: Mr. Roger Wolf Papago Legal Services Subject

Crono

Social Services: DKrahulec; EA: 12/27/67

Social Services 720

December 13, 1967

Mr. Ramon Ruiz Box 849 Ajo Arizona 85321

Dear Mr. Ruiz:

We are writing in regard to the application you made for general assistance at the Social Services Branch in Sells on December 11, 1967.

We wish to inform you that your application has been disapproved as you do not meet one of the eligibility requirements. Under the regulations governing our general assistance program, "eligibility for general assistance is limited to Indians living on reservation." In view of the fact that you are living off the reservation, you do not meet this requirement.

If we may help in regard to further explanation, please feel free to contact our office at your convenience.

Sincerely yours,

EVERETT L. DOWNING Social Service Representative

cc: Subject Crono

Social Services: L Downing: bfa 12-13-67

# DEPARTMENT OF THE INTERIOR Bureau of Indian Affairs

WELFARE CASE RECORD JURI SCIETION

CASE NO. 6-2084

12-11-67 DATE RUIZ PARILY SAVE

IDENTIFYING INFORMATION

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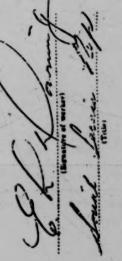
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PETE RUIZ	1		SAN DIEGO, CALIF. (SERVICE)
7			

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# DEPARTMENT OF THE INTERIOR BUREAU OF INDIAN AFFAIRS

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### IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

### No. Civ. 2408-Tucson

[Filed Jun. 7, 1968, Wm. H. Loveless, Clerk, United States District Court for the District of Arizona, By /s/ Louise Clelland, Deputy Clerk]

RAMON RUIZ and ANITA RUIZ, for themselves and all others similarly situated, PLAINTIFFS

\_ vs.

STEWART L. UDALL, Secretary of the Interior, DEFENDANT

### ANSWER

COMES NOW the defendant, by and through its attorney undersigned, and in answer to the plaintiffs' complaint admits, denies and alleges as follows:

### FIRST DEFENSE

The complaint fails to state a claim upon which relief can be granted against the defendant, Stewart L. Udall.

### SECOND DEFENSE

T

Paragraph I contains conclusions of law which do not require an answer and which, therefore, are neither admitted nor denied.

II ·

Admits the allegations contained in Paragraphs II, IV and VI.

### Ш

Denies the allegations contained in Paragraph III of plaintiffs' complaint and affirmatively alleges jurisdiction

and venue to entertain the class action as described in said paragraph does not lie.

### IV

Admits the allegations contained in Paragraph V of the complaint that the plaintiffs reside at hjo, Arizona, and that the mines in Ajo were closed in July, 1967; defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of said paragraph, and, therefore, denies the same; defendant alleges that the mines in Ajo are now open and have resumed operations.

### V

Admits the allegations contained in Paragraph VII of the complaint concerning applications by the plaintiffs for general assistance benefits, the action taken thereon and the appeals filed by them; defendant denies that a final administrative decision was rendered by the Acting Area Director of the Phoenix Area Office or by any other officer, agent or employee of the defendant.

### VI

Denies the allegations contained in Paragraphs VIII, XII, XIII and XIV of the complaint.

### VII

Is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph IX of the complaint, and, therefore, denies said allegation.

### VIII

Admits the existence of the statute authorizing expenditures for welfare payments to Indians pursuant to 25 U.S.C. § 13 (1965) as alleged in Paragraph X of the complaint; defendant denies the conclusion contained in the last sentence of said paragraph and alleges that the defendant does have authority to limit welfare payments

to Indians residing on Indian reservations, and further that such limitation is in accord with the intent of Congress.

### IX

Paragraph XI contains conclusions of law which do not require answer, and which, therefore, are neither admitted nor denied.

### AFFIRMATIVE DEFENSE

As an affirmative defense, defendant alleges the plaintiffs have failed to exhaust their administrative remedies prior to the institution of this action, pursuant to 25 C.F.R. 2.5.

WHEREFORE, it is respectfully urged that the relief sought by the plaintiffs be denied in all respects and that their complaint be dismissed with costs awarded to the defendant.

> EDWARD E. DAVIS United States Attorney

/s/ Morton Sitver
Assistant United States
Attorney

Copy of the foregoing mailed this 7th day of June, 1968 to:

Mr. Roger C. Wolf
Papago Legal Services Program
P. O. Box 246
Sells, Arizona 85634
Attorney for plaintiffs

/s/ Morton Sitver
Morton Sitver
Assistant United States Attorney

# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

### No. Civ. 2408-Tucson

[Filed Nov. 29, 1968, Wm. H. Loveless, Clerk, United States District Court for the District of Arizona, By /s/ Louise Clelland, Deputy Clerk]

RAMON RUIZ and ANITA RUIZ, for themselves and all others similarly situated, PLAINTIFFS

vs.

STEWART L. UDALL, Secretary of the Interior, DEFENDANT

### AGREED STATEMENT OF FACTS

It is hereby mutually agreed by the parties of this action that the following statement of fact shall be all of the facts upon which the Court shall render judgment, subject to any legal objection considered by the Court and subject to any affidavits submitted in support of a motion for summary judgment under Rule 56, Federal Rules of Civil Procedure, or otherwise submitted and accepted by the Court:

1. Plaintiffs, Ramon Ruiz and Anita Ruiz, are citizens of the United States.

2. Plaintiffs are American Indians.

3. Plaintiffs are members of the Papago Tribe of Arizona, speak and understand the Papago language and speak and understand only a limited amount of English.

4. Plaintiffs reside with their minor daughter at Ajo, Arizona, in a community of Indians commonly known as

"the Indian Village".

5. The Indian Village is populated almost entirely by

Papago Indians.

 Practically all the land and most of the homes in the Indian Village are owned by the Phelps-Dodge Company, and rented by the Company.

7. Plaintiff stated in a hearing held January 23, 1968 at Ajo, Arizona, that plaintiffs left the Papago Indian

Reservation in 1940 in order to seek employment at the mines in Ajo, Arizona, and the defendant has no knowledge relative to this but does not dispute the correctness of the plaintiff's statement for the purpose of this Agreed Statement of Facts.

8. These mines are operated by the Phelps-Dodge Com-

pany.

9. Plaintiff stated in a hearing held January 23, 1968 at Ajo, Arizona that plaintiff has lived in Ajo, Arizona and worked in these mines continuously since 1940 and the defendant has no knowledge relative to this but does not dispute the correctness of the plaintiff's statement for the purpose of this Agreed Statement of Facts.

10. Plaintiff stated in a hearing held January 23, 1968 at Ajo, Arizona that plaintiff has lived in his present residence in Ajo, Arizona continuously since 1947 and the defendant has no knowledge relative to this but does not dispute the correctness of the plaintiff's statement for the purpose of this Agreed Statement of Facts.

11. The mines where plaintiff, Ramon Ruiz, is employed were closed by a strike on July 19, 1967, and remained closed by that strike until March 20, 1968.

12. Defendant, Stewart L. Udall, is the Secretary of

the Interior.

13. Defendant has his office in the District of Columbia.

14. Acting under 25 U.S.C. § 13 (1964), 42 Stat. 208 (1921), and delegations of authority, defendant has delegated to the Commissioner of Indian Affairs the authority to set forth guide lines pertaining to the eligibility of Indians for general assistance welfare payments.

15. Acting by virtue of such delegated authority, the Commissioner of Indian Affairs has promulgated the statement contained in 66 I.A.M. 3.1.4 which states "[e]ligibility for general assistance is limited to Indians living on reservations and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma."

 Plaintiffs applied for general assistance benefits from the Bureau of Indian Affairs on December 11, 1967.

17. Plaintiffs were denied benefits and notified by letter dated December 13, 1967.

18. Plaintiffs appealed to the Superintendent of the Papago Indian Agency and were denied benefits on December 27, 1967.

19. Plaintiffs appealed to the Phoenix Area Director of the Bureau of Indian Affairs and a hearing was held

in Ajo, Arizona on January 23, 1968.

20. Plaintiff stated in a hearing held January 23, 1968 at Ajo, Arizona, that at the time of this hearing plaintiff, Ramon Ruiz, was supporting his wife and minor daughter. In addition, he was giving financial aid to his two older sons and to his married daughter, and the defendant has no knowledge relative to this but does not dispute the correctness of the plaintiff's statement for the purpose of this Agreed Statement of Facts.

21. Plaintiff stated in a hearing held January 23, 1968 at Ajo. Arizona, that at the time of this hearing and throughout the entire time the strike was in progress. plaintiff's sole income was a \$15 per week striker's benefit paid by the union and the defendant has no knowledge relative to this but does not dispute the correctness of the plaintiff's statement for the purpose of this Agreed Statement of Facts.

22. Plaintiff stated in a hearing held January 23, 1968 at Ajo, Arizona, that at the time of the hearing plaintiff was in debt for a sum in excess of \$1,500, and the defendant has no knowledge relative to this but does not dispute the correctness of the plaintiff's statement for the purpose of this Agreed Statement of Facts.

23. The residence requirement stated in 66 I.A.M. 3.1.4 bars the plaintiffs from eligibility for general assistance benefits from the Bureau of Indian Affairs.

24. An administrative decision denying general assistance benefits to plaintiffs was rendered January 25. 1968 by the Acting Area Director of the Phoenix Area Office of the Bureau of Indian Affairs.

25. The sole ground of this denial was that plaintiffs resided outside the boundaries of the Papago Reservation.

26. Plaintiff stated in a hearing held January 23, 1968 at Ajo, Arizona, that plaintiff sought welfare assistance from the State of Arizona on November 20, 1967 at Ajo, Arizona, and the defendant has no knowledge relative to

this but does not dispute the correctness of the plaintiff's statement for the purpose of this Agreed Statement of Facts.

27. Plaintiff stated in a hearing held January 23, 1968 at Ajo, Arizona that plaintiffs were denied welfare assistance from the State because State assistance is not available to striking union members, and the defendant has no knowledge relative to this but does not dispute the correctness of the plaintiff's statement for the purpose of this Agreed Statement of Facts, as shown by the attached affidavit of Ever L. Hanson, County Welfare Director, Pima County.

It is hereby mutually agreed by and between the abovementioned parties that no prior pleadings in this action, neither the complaint with attachment nor the answer, shall be deemed to be rendered null and void by the Agreed Statement of Facts, except those which are in direct contradiction to those facts, which are agreed upon here-

in.

The Court is hereby requested by the above-mentioned parties to render any judgments as may be proper on the facts herein.

Dated: November 26, 1968.

EDWARD E. DAVIS United States Attorney

- /s/ Richard S. Allemann
  RICHARD S. ALLEMANN
  Assistant United States Attorney
  Attorneys for the defendant
- /s/ Roger C. Wolf
  Attorney for the plaintiffs

### STATE OF ARIZONA

### DEPARTMENT OF PUBLIC WELFARE

PIMA COUNTY

EVER L. HANSON County Director 151 West Congress Tucson, Arizona 85701

[Received Nov. 12, 1968]

November 8, 1968

Mr. Roger C. Wolf Papago Office of Economic Opportunity Legal Services Program Sells, Arizona

Dear Mr. Wolf:

Re: Mr. Ramon Ruiz

This is in reply to your letter of October 29, 1968, regarding State of Arizona Public Welfare benefits available to Mr. Ramon Ruiz during the mine strike.

During the strike period, striking miners with Union membership, receiving strikers' benefits, were not eligible for either General Assistance or Emergency Relief from the Department of Public Welfare. However, striking miners were eligible to draw Surplus Commodities under the Department of Public Welfare Surplus Commodities Distribution Program, provided the eligibility requirements for this program were met.

The records of the Pima County Welfare Office show that Mr. Ramon Ruiz applied for Surplus Commodities on November 20, 1967 and was certified as eligible to receive Surplus Commodities for a ninety-day period, and

on February 9, 1968, was recertified to receive Surplus Commodities for another ninety-day period.

Very truly yours,

/s/ Ever L. Hanson EVER L. HANSON County Welfare Director

ELH:gb

State of Arizona County of Pima

On this 8th day of November 1968, personally appeared before me Ever L. Hanson, known to me to be the person who executed the foregoing for the purpose contained therein;

/s/ Marcia Eatinger Notary Public

My Commission expires 7-6-1969

## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

No. Civ. 2408-Tucson

[Filed Nov. 27, 1968, Wm. H. Loveless, Clerk, United States District Court for the District of Arizona, By /s/ Catherine A. Dougherty, Deputy Clerk]

RAMON RUIZ and ANITA RUIZ, for themselves and all others similarly situated, PLAINTIFFS

vs.

STEWART L. UDALL, Secretary of the Interior, DEFENDANT
MOTION FOR SUMMARY JUDGMENT

COMES NOW the defendant, Stewart L. Udall, by and through his attorneys, pursuant to Rule 56, Federal Rules of Civil Procedure, and moves the Court for summary judgment in his favor, there being no genuine issue as to any material fact and the defendant being entitled to judgment as a matter of law.

EDWARD E. DAVIS United States Attorney

/s/ Richard S. Allemann RICHARD S. ALLEMANN Assistant United States Attorney

### IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

No. Civ. 2408-Tucson

RAMON RUIZ and ANITA RUIZ, for themselves and all others similarly situated, PLAINTIFFS

vs.

STEWART L. UDALL, Secretary of the Interior, DEFENDANT

DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

The pleadings on file herein clearly establish the propriety of granting summary judgment in favor of the de-

fendant in this case.

The plaintiffs, members of the Papago Indian Tribe, made application for financial assistance pursuant to 25 U.S.C. 13. Their application indicated they were not residents of the reservation and the application was denied in accordance with the governing regulations contained in 66 Indian Affairs Manual, 3.4A, the pertinent

portions of which are attached hereto.

Under the provisions of the Snyder Act, 42 Stat. 208 (1921), 25 U.S.C. 13 (1964), the Bureau of Indian Affairs under the supervision of the Secretary of the Interior is to direct, supervise and expend monies for the benefit, care and assistance of the Indians throughout the United States for certain specified purposes. These specified purposes include general support. Implementing the Snyder Act, supra, Congress has, with a great degree of regularity since 1922, passed legislation appropriating funds. See, e.g., 42 Stat. 565 (1922); 42 Stat. 1186 (1923).

Congressional authority was given to the Secretary to delegate these powers to the Commissioner of Indian Affairs (60 Stat. 939 (1946), 25 U.S.C. 1a (1964)). It is, in fact, the Commissioner of Indian Affairs who has management of all Indian affairs and of all matters arising out of Indian relations involving Indian wards under the jurisdiction of the Department of the Interior

(4 Stat. 564 (1832), 15 Stat. 228 (1868), 25 U.S.C. 2 (1964)). Acting in accordance with the authority given him by Congress, the Secretary of the Interior delegated his functions under the Snyder Act, supra, to the Commissioner of Indian Affairs (230 Department of the Interior Manual 2.1). Empowered with these delegated authorities, the Commissioner of Indian Affairs has promulgated certain rules and regulations compiled in the Indian Affairs Manual. Volume VI, Community Services, Part 6, Welfare, Chapter 3, General Assistance and Social Services, sets forth these rules and regulations with reference to the Snyder Act, supra. In pertinent part, these rules and regulations provide:

Eligibility for general assistance is limited to Indians living on reservations and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma.

While other conditions prerequisite to an individual's ability to obtain assistance are stated, the sine quo non of residence is sufficient to estop the plaintiffs from ob-

taining general aid.

The Secretary and, a fortiari, the Commissioner, does not have unlimited power but is subject to legislative restrictions. See, e.g., United States v. Arenas, 158 F.2d 730, 9th Cir. (1946); cert. den. 331 U.S. 842. The appropriations acts implementing the Snyder Act provide that appropriate funds are to be utilized for the "support and civilization of Indians under the jurisdiction of the following agencies, to be paid from the funds held by the United States in trust for the respective tribes ... " (emphasis added) [Here follows a list of Bureau of Indian Affairs' agency offices in Arizona.] 42 Stat. 565 (1922). To the same effect are subsequent appropriations acts. The Commissioner, acting under his delegated authority, interpreted the language of the Snyder Act, together with its implementing appropriations acts, as limiting eligibility for general assistance to Indians living on reservations. In Arizona the only Indians under the general jurisdiction of Bureau of Indian Affairs agencies reside on reservations. As stated in Udall v. Tallsman, 380 U.S. 1, at page 16:

When faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration. "To sustain the Commission's application of this statutory term, we need not find that its construction is the only reasonable one, or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings." Unemployment Comm'n v. Aragon, 329 U.S. 143, 153. See also, e.g., Gray v. Powell, 314 U.S. 402; Universal Battery Co. v. United States, 281 U.S. 580, 583. "Particularly is this respect due when the administrative practice at stake 'involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new." Power Reactor Co. v. Electricians, 367 U.S. 396, 408.

At page 17:

The Secretary's interpretation had, long prior to respondent's applications, been a matter of public record and discussion.

At page 18:

In McLaren v. Fleischer, 256 U.S. 477, 480-481, it was held:

"In the practical administration of the act the officers of the land department have adopted and given effect to the latter view. They adopted it before the present controversy arose or was thought of, and, except for a departure soon reconsidered and corrected, they have adhered to and followed it ever since. Many outstanding titles are based upon it and much can be said in support of it. If not the only reasonable construction of the act, it is at least an admissible one. It therefore comes within the rule that the practical construction given to an act of Congress, fairly susceptible of different constructions, by those charged with the duty of

executing it is entitled to great respect and, if acted upon for a number of years, will not be disturbed except for cogent reasons."

Several bills have been introduced before Congress to extend the Bureau's welfare program to off-reservation Indians. The latest of these were H.R. 9621, 87th Cong., 2d Sess., and H.R. 6279, 88th Cong., 1st Sess. These attempts to have the Bureau's welfare program extended to non-reservation Indians were unsuccessful. It is clear that Congress knows of and approves the limitation of the Bureau's welfare program to Indians residing on reservations under its jurisdiction. Congress could also have made provision, which it did not, specifically to include off-reservation Indians in any of several appropriations acts providing for the expenditure of monies under the Snyder Act, supra.

The fairness of the Congressional limitations clearly espoused in the acts of Congress are not a matter for judicial determination. The law and correspondingly the authority of the Secretary and of the Commissioner is limited to providing welfare assistance to Indians re-

siding on a reservation.

It is submitted, therefore,:

1. The Snyder Act, *supra*, and the implementing appropriations acts by their terms limit assistance to Indians residing on reservations under the jurisdiction of the Bureau of Indian Affairs;

2. In any event, implementing regulations promulgated by the Commissioner of Indian Affairs spelled out this limitation which has been affirmed by Congress in its failure to extend coverage of the act to non-reservation Indians when requested so to do.

Respectfully submitted,

EDWARD E. DAVIS United States Attorney

/s/ Richard S. Allemann RICHARD S. ALLEMANN Assistant United States Attorney Copy hereof mailed this 27th day of November, 1968 to:

Roger C. Wolf, Esquire
Papago Legal Services
The Papago Tribe
Papago Office of Economic Opportunity
Legal Services Program
P. O. Box 246
Sells, Arizona 85634

/s/ Richard S. Allemann
RICHARD S. ALLEMANN
Assistant United States Attorney

### 3 GENERAL ASSISTANCE AND SOCIAL SERVICES

### 3.1 General Assistance

- .1 Purpose. The purpose of the general assistance program is to provide necessary financial assistance to needy Indian families and persons living on reservations under the jurisdiction of this Bureau and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma.
  - 2 Authority. The Snyder Act of November 2, 1921 (25 U.S.C. 13) provides that the Bureau shall direct, supervise, and expend such moneys as Congress may from time to time appropriate for the benefit, care, and assistance of Indians throughout the United States. The annual appropriation for the Department of Interior includes funds for welfare services to Indian children and adults in need of assistance.
  - .3 General Policy. Individuals and families who may require general assistance, whether on short or long term basis, are expected to use resources and employment actually available to them in meeting basic living needs. When resources are unavailable, or are insufficient, and assistance from other public sources is not available, then general assistance will be furnished to meet unmet living needs or to supplement available resources to the extent that unmet needs may be met.

In furnishing general assistance to needy Indian families and persons the Bureau's interest encompasses both the meeting of unmet needs when income and resources are insufficient, and helping them, whenever possible, to make positive and constructive use of all resources available to them so as to foster self-help and independence. The involvement and responsibility

of the families and persons in connection with plans for use of resources and other plans for personal development or rehabilitation should be emphasized.

### .4 Eligibility Conditions.

- A. Residence. Eligibility for general assistance is limited to Indians living on reservations and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma.
- B. Unavailability of Public Assistance or General Assistance from a State or Local Jurisdiction. Individuals receiving public assistance in their own right, or whose needs are included in a public assistance payment are not eligible for Bureau general assistance.

Indians for whom general assistance is actually available from a State, county or local public jurisdiction are not eligible for general assistance from the Bureau.

General assistance may be provided to meet need for an interim period for an individual or family, who may be eligible for public assistance pending an application for and a determination of eligibility and receipt of the first public assistance check. Each applicant for general assistance, individual or family, considered as potentially eligible for public assistance will be advised to make an application at the first reasonably available opportunity and, if necessary, may be assisted to apply.

When it appears that a needy Indian or family is eligible for public assistance and has made a reasonable effort to comply with the public assistance requirements, but the local public assistance agency has not afforded adequate and proper consideration in accepting

the application or in making a prompt and and proper determination of eligibility and decision, general assistance may be continued. In such instances the Branch of Welfare shall ascertain the facts, and if necessary, assist the person in presenting his claim for public assistance to the local agency or, if advisable, assist him in making a written appeal to the State Agency for a fair hearing.

When there is evidence that a local or State public assistance agency consistently fails or refuses to assure Indians their legal rights to apply for and to receive public assistance, if eligible, or otherwise shows evidence of discriminatory practices toward Indian applicants for public assistance in violation of the Social Security Act the Agency Social Worker shall submit a documented report of such case situations to the Area Office.

totals ending in 50¢ or more will be used. State standards and procedures for maximum grants and percentage limitation are not to be applied.

Payments shall be made at regular periods. This may be monthly, on or about the first of the month, or when in the judgment of the social worker the recipient will be best served through receipt of general assistance payments in smaller amounts, the payments may be made semimonthly or weekly in amounts adjusted from the total monthly budget deficit to cover the specified periods.

Persons who are determined eligible on a date after the first of the month shall receive payment in an amount to cover the remainder of the month. In emergency situations a supplementary voucher may be submitted to meet immediate and pressing need.

General assistance payments shall be made by check payable to the recipient (payee) and addressed to him, except that general assistance checks may be made payable to a third party for the recipient when after investigation it is determined that he is mentally incapable of managing his own affairs and the third party has assumed responsibility for providing his care and maintenance. Payments to a third party should have the approval of the superintendent and the justification for the arrangement shall be stated in the case record.

General assistance checks shall not be addressed in care of another person unless the recipient has furnished a signed written request for such action. The signed request for such mailing must be retained in his case record.

Imprest funds may be used to meet an emergency need. Purchase orders for subsistence needs may be used to prevent hardship, or to meet an emergency when a delay in payment by check would cause hardship or suffering.

.9 Appeals. When a person expresses dissatisfaction with a decision concerning his eligibility or payment the social worker will review with him the facts upon which the decision was based to ascertain the validity of the facts and the decision. If an error was made or if new or additional evidence justifies a modification or adjustment of the decision in line with established policy, appropriate adjustment will be made.

If after such a review the person is not satisfied with the agency decision he shall have the right to make an appeal to the superintendent. If he appeals to the superintendent the record of the facts or information upon which the deci-

sion or possible adjustment was based shall be submitted to the superintendent. If the individual continues to be dissatisfied after the superintendent has heard his appeal and has rendered a decision, the superintendent shall advise him of his right to make an appeal in writing to the Area Office. When a written appeal is made to the Area Office the superintendent will request the Area Office to conduct a review at the agency. The findings of the review and the decision of the Area Director shall be transmitted to the individual through the superintendent. Thereafter changes in eligibility and the amount of payment will be contingent upon changes in the case situation.

Reviews of Eligibility and Service Needs. Planned reviews of their case situations should be made with individuals and families receiving assistance to evaluate: (a) any changes in their living circumstances and household composition, (b) need for continued assistance and necessary adjustments in payments. (c) result of services given and need for additional services which can be furnished by the Branch of Welfare, or obtained through referral through other sources. Eligibility shall be reviewed whenever there is indication or likelihood of a change in circumstances, or when an individual or family asks for a reconsideration of need. Likewise, consideration will be given to requests for service whenever such requests are made. Otherwise, a review of eligibility shall be made not less often than once in each six-month period.

# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

No. Civ. 2408-Tuc

[Filed, June 5, 1969, 3:15 p.m., Wm. H. Loveless, Clerk, United States District Court for the District of Arizona, By /s/ Catherine A. Dougherty, Deputy Clerk]

RAMON and ANITA RUIZ, for themselves and all others similarly situated, PLAINTIFFS

vs.

WALTER HICKEL, Secretary of the Interior, DEFENDANT

CROSS MOTION FOR SUMMARY JUDGMENT

Defendant having previously moved for summary judgment, plaintiffs, Ramon and Anita Ruiz, in response now move the court for summary judgment in their favor pursuant to Rule 56, Federal Rules of Civil Procedure, based upon the agreed statement of facts, the supporting affidavits and exhibits on file with the court and the memorandum filed in support of this motion.

Respectfully submitted,

- /s/ Roger C. Wolf
  ROGER C. Wolf
  Attorney for the Plaintiffs
  Papago Legal Services
  Sells, Arizona
- /s/ Winton D. Woods, Jr. WINTON D. WOODS, JR. Associate Counsel Papago Legal Services Sells, Arizona

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### AFFIDAVIT OF SERVICE

I, ROGER C. WOLF, being duly sworn, declare that I have on this date served a copy of this motion and the memorandum in support thereof on the defendant herein, through his authorized representative, by depositing a copy of the petition and memorandum in the United States mails, postage prepaid, addressed to Richard S. Allemann, Assistant United States Attorney, 5000 Federal Building, Phoenix, Arizona 85025.

### /s/ Roger C. Wolf Affiant

Subscribed and sworn to before me this 5th day of June, 1969, by ROGER C. WOLF.

Notary Public

My Commission Expires:

### IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

### Civ-2408 Tuc.

[Filed Jun. 5, 1969, 3:15 p.m., Wm. H. Loveless, Clerk, United States District Court for the District of Arizona, By /s/ Catherine A. Dougherty, Deputy Clerk]

RAMON and ANITA RUIZ, for themselves and all others similarly situated, PLAINTIFFS

vs.

WALTER HICKEL, Secretary of the Interior, DEFENDANT

PLAINTIFFS' MEMORANDUM IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT

ROGER C. WOLF
Papago Legal Services
Sells, Arizona
WINTON D. WOODS, JR.
Associate Counsel
Papago Legal Services
Sells, Arizona

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# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

No. Civ. 2408-Tuc

RAMON and ANITA RUIZ, for themselves and all others similarly situated, PLAINTIFFS

V8.

WALTER HICKEL, Secretary of the Interior, DEFENDANT

PLAINTIFFS' MEMORANDUM IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT

#### FACTS

The factual basis for this motion for summary judgment is contained in the Agreed Statement of Facts and the Affidavits attached to this Memorandum as Exhibits. This Court may take judicial notice of matters of legislative fact contained in the affidavits. See: McCormick, Evidence (1954) § 329.

#### SUMMARY OF ARGUMENT

Neither the plain meaning nor the legislative history of the statute indicates that Congress intended to authorize the exclusion of Indians such as the Plaintiffs. Under accepted standards of statutory construction any doubt should be resolved in Plaintiffs' favor. If, however, the Court finds that the regulation in question is proper under the statute it is nonetheless unconstitutional because as applied to Plaintiffs: 1) it irrationally discriminates against Plaintiffs, and 2) it infringes upon Plaintiffs' constitutional right to freedom of movement without compelling justification in a situation where less drastic means are available to effectuate the governmental purposes.

DEFENDANT'S REGULATION 66 I.A.M. 3.1.4 IS IN CONFLICT WITH THE CONGRESSIONAL MANDATE IN 28 U.S.C. § 13.

The first question presented in this case is simply this: Can the Department of the Interior maintain a program of general assistance for needy, employable Indians in such a way that only Indians who live on a reservation are eligible for that assistance? It should be kept in mind that the general assistance program is in no way designed to take the place of existing state welfare programs, but is intended to sustain Indians where there is no state program. If the Court rules that off-reservation Indians should not be excluded from the program, it will not mean that the federal government will be forced to take over a responsibility of the state. State of Arizona has no general assistance program for employable people [ARS § 46-233(A) (4) makes this clear], and is under no compulsion to establish such a program.

The main argument in Defendant's memorandum is that the 66 Indian Affairs Manual limitation of Bureau welfare to reservation Indians is a long-standing, contemporaneous interpretation of the authorizing statute (25 U.S.C. § 13) and is an interpretation impliedly sanc-

tioned by Congress.

This argument is simply mistaken. First, the Defendant does not show that the residence restriction is contemporaneous or long-standing. The welfare materials in the Indian Affairs Manual (I.A.M.) bear the date 1965, and Defendant has not shown that prior regulations, if any, contained the same restriction. Since the program of cash assistance did not begin until 1944, the residence restriction in question could not have begun prior to then, and therefore it can hardly be contemporaneous with the 1921 Snyder Act authorizing appropriations (42 Stat. 208, 25 U.S.C. § 13). The Defendant's memorandum (page 3) relies on a 1922 appropriation act implementing the Snyder Act for the language

in the appropriation act giving funds for Indians "under the jurisdiction of" various Indian agencies. Nowhere does Defendant attempt to show what the jurisdiction of an Indian agency is. Apparently we are to assume that an Indian Agency, such as the Papago Agency, is somehow constitutionally unable to give away money to needy Indians beyond the geographic boundaries of its "jurisdiction" and that Congress would not have used the word "jurisdiction" except to agree to this premise. This is an unwarranted and unsubstantiated assumption. Such concepts of jurisdiction do not prohibit the granting of student loans to Indians who reside near, but not necessarily on, Indian reservations. [25 C.F.R. § 32.1 (1968)]. Nor did it deter the Commissioner of the Bureau of Indian Affairs. Robert L. Bennett, from the following language in his written statement to a Congressional committee:

We are a modern service bureau, serving as many as 400,000 Indians and Alaska Natives who live on or near reservations—people who find themselves isolated from the mainstream of American life—existing in poverty. [Emphasis supplied]. [Hearings on H.R. 17354 Before a Subcommittee of the Senate Committee on Appropriations, 90th Cong., 2nd Sess., Pt. 1, at 368 (1968)].

Defendant relies upon *Udall* v. *Tallman*, 380 U.S. 1, (1965). That case includes the following language:

The Secretary's interpretation had, long prior to respondents' applications, been a matter of public record and discussion [380 U.S. at 17].

But Defendant does not offer any indication that the I.A.M. materials dealing with welfare, let alone the specific prohibition in § 3.1.4 on residency, was a matter of public record and discussion. It is common knowledge that welfare regulations are hard to obtain, CCH Poverty Law Reporter, ¶ 1035 (1968), and the I.A.M. is no exception. It is almost preposterous to assume that Congress, or anyone else for that matter, is or has been for

any length of time aware that the BIA denies welfare to Indians who reside off reservations.

The "regulations" on BIA welfare appear in the Indian Affairs Manual, rather than in the more readily available Code of Federal Regulations. This is contrary to the Bureau's own policy as stated in its 1968 introduction to the Indian Affairs Manual, O BIAM 1.2 (1968), [see Exhibit "F"]. "Eligibility Qualifications" are to be published in the Code of Federal Regulations. Since they have not been so published, the Bureau cannot now impute to Congress knowledge of and acquiescence to their content. Furthermore, the welfare regulations apparently did not appear in the Federal Register as required by 5 U.S.C. § 552 (a) (1), and therefore Plaintiffs cannot be "adversely affected by" the requirement of residence on a reservation.

Defendant's memorandum cites the introduction of two bills before Congress to show that Congress knows of the residency limitation in question. According to Defendant's memorandum (page 4), the bills were "to extend the Bureau's welfare program to off-reservation Indians." This is not the case. The bills [H.R. 6279, 88th Cong., 1st Sess.; H.R. 9621, 87th Cong., 2d Sess.] (Exhibits D & E), are substantially the same and were introduced by the same Congressman (Berry). Their primary purpose was to provide the same sort of formula of federal matching funds for Indian categorical assistance grants (in the six states enumerated) under the Social Security Act as is provided for Navajos and Hopis under the Navajo-Hopi Rehabilitation Act. 25 USCA § 639. Section 2 of each bill apparently provided for an expansion of services under the Snyder Act to Indians in the specified states who reside outside reservations, but it included services in addition to welfare, namely education, medical assistance, and agricultural assistance, and it appears that the extension of services contemplated was limited not only to the six enumerated states (Arizona not being included), but was also limited to those states of the six which are party to a contract with the BIA under 25 USC § 452.

Thus the bills were not an attempt to have the Bureau's welfare program extended to non-reservation Indians, nor is it clear that Congress "knows of and approves the limitations" here in question. Even if the bills did clearly indicate knowledge of the residency limitation, it is not clear that the failure of these bills to pass indicates Congressional "approval" of the limitation. The bills were probably rejected for any of several more compelling reasons, such as the desire to have the states continue to pay their share of categorical assistance, or the desire to avoid favoring certain states over the rest with regard to various Indian matters.

Until the advent of legal aid programs on Indian reservation in the mid-1960's, it was unlikely that the administrative regulation in question would be challenged by an Indian welfare recipient. Thus the fact that the administrative construction of the statute has not been challenged until this case does not require the Court to pay deference to the administrative construction of the statute. The circumstances surrounding administrative construction of statutes are relevant. Leary v. United States, — U.S. —, 37 LW 4397, 4402 (1969).

The Defendant's argument presupposes that the Snyder Act allows for interpretation with regard to which Indians are to be eligible for monies thereunder. Our position is that the Secretary of the Interior is initiating, contrary to the plain meaning of the statute, a policy matter. This is forbidden and should not be enforced by the Court. Arenas v. United States, 322 U.S. 419, 432 (1943).

The plain meaning of the statute is the best indication of what Congress intended. United States v. American Trucking Association, 310 U.S. 534, 543. (1940). The language of the statute allows expenditure of funds for the benefit, care and assistance of the Indians throughout the United States. Throughout means in every part, not just in some specified areas. See Jarvis Towing and Transp. Corp. v. Aetna Ins. Co., 82 NE 2d 577, 578, 298 NY 280 (1948). Thus the purpose of the statute is to assist Indians in every part of the United States. The statute does not purport to assist Indians only so long

as they reside on Indian reservations. If the statute is not ambiguous, even a long-standing departmental construction of its language is not binding on the courts. Swift Co. v. U.S., 105 U.S. 691, 695 (1881). Furthermore, the regulations restricting benefits to Indians on reservations do not relate to the obvious purpose of the statute, are therefore unauthorized and should not be enforced by the Court. Trust of Bingham v. Commissioner, 325 U.S. 365, 377 (1944); Manhattan General Equipment Co. v. Commissioner of Internal Revenue, 297 U.S. 129, 134 (1936).

The Secretary of the Interior cannot initiate policy matters, by regulations or otherwise, contrary to the statute in question. Arenas v. United States, 322 U.S. 419, 432 (1943). He cannot legislate through his regulations. Helvering v. Sabine Trans. Co., 318 U.S. 306, 311-12 (1942). Regulations implementing a statute must be reasonable as well as consistent with the statute. Manhat-

tan General, supra, 297 U.S. at 135.

The legislative history of 25 USC § 13 is at best unclear as the material contained in Appendix A will show. But if the statute is unclear the ambiguity should be resolved in favor of the Indians. The Supreme Court of the United States has been careful to prevent legislative ambiguities from working to the detriment of the Indians. Alaska Pacific Fisheries v. United States, 248 U.S. 78, 98 (1918); United States v. Oregon Short Line R. Co., 113 F.2d 212, 214 (1940). In a more recent case, in construing the General Allotment Act of 1887, Mr. Justice Warren noted: "Doubtful expressions are to be resolved in favor of the weak and defenseless people who are the wards of the nation, dependent upon its protection with good faith." Squire v. Capoeman, 351 U.S. 1, 6-7 (1956).

Given the important constitutional questions involved in this case, the Court should be reluctant to infer from the act in question that the Secretary has discretion to exclude whole classes of Indians from these benefits. In Kent v. Dulles 357 U.S. 116, 128, 130 (1957), the Court through Justice Douglas held that where Congress gave no explicit authorization to the Secretary of State to deny passports on political grounds, the statute would not be construed as giving the Secretary of State that power. This holding was in spite of the fact the "the issuance of passports is 'a discretionary act' on the part of the Secretary of State." 357 U.S. at 124. The discretionary power of the defendant is also limited.

#### II

DEFENDANT'S REGULATION 66 I.A.M. 3.1.4 DENIES PLAINTIFFS EQUAL PROTECTION OF LAW AND THUS VIOLATES PLAINTIFFS' RIGHTS UNDER THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Although the extent to which the requirement of equal protection of law operates against the federal government under the Fifth Amendment is unclear [see Bolling v. Sharpe, 347 U.S. 497 (1954)], it is obvious that the claims set forth in this case are within the requirement. Shapiro v. Thompson, —— U.S. ——, 89 S. Ct. 1323 (1969). In Shapiro, Mr. Justice Harlan in his dissenting opinion summarized the present state of the law, which extends the test of equal protection beyond the mere rational classification test:

In upholding the equal protection argument, the Court has applied an equal protection doctrine of relatively recent vintage: the rule that statutory classifications which either are based upon certain "suspect" criteria or affect "fundamental rights" will be held to deny equal protection unless justified by "compelling" governmental interest. 89 S.Ct. at 1344.

The classification in issue in this case, i.e., "nonreservation Indians", is violative of both the traditional rational classification standard and the more stringent "compelling governmental interest" standard articulated in Shapiro.

In Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886), the United States Supreme Court noted that: "... equal protection of the law is a pledge of the protection of equal laws." When a state or the federal government treats

classes of persons differently, such differences in classification are valid only if they are reasonable in light of

a legitimate legislative purpose.

In the case at bar we are faced with two classes of persons: Papago Indians residing on a reservation, and Papago Indians residing off the reservation. The reasonableness of such a classification may be tested, under the equal protection clause, by comparing: (1) the necessity for the discrimination [i.e., the importance to the government of such diverse treatment]; (2) relevant differences in the situations of those treated unequally; and (3) the impact of the discrimination upon individual rights and other human values. Harvith, The Constitutionality of Residence Tests for General and Categorical Assistance Programs, 54 Calif.L.R. 567, 610 (1966); cf., Shapiro v. Thompson, supra.

# (1) The Necessity for the Discrimination

The legislative history of the enabling statute in question is scant, at best. [See Appendix "A".] As for the regulation, little can be gleaned about its underlying intent. The information available, however, clearly indicates that no legitimate purpose would be served by providing for such diverse treatment among these two classes

of Papago Indians.

As is shown in Apendix "A", the mood of Congress at the time the enabling legislation was passed, was one of liberality toward the Indian. Congress wanted to emancipate the Indian by providing him with aid and education. Absorption of the Indian into American society was strongly urged. Emphasis was placed on getting the Indian off the reservation—not confining him to its territorial boundaries. In light of this, it is obvious that the regulation in question could not have as its purpose the confinement of Papago Indians to the territorial boundaries of their reservation.

The evident primary purpose, and undoubtedly the major one, is to limit the number of Indians who may receive benefits. Since a good many members of the Papago Tribe do not live on the reservation (see, e.g., Exhibit "B") the economics of the discrimination are

evident. But as the Supreme Court pointed out in Shapiro, mere economy cannot justify an unconstitutional discrimination. And, in Oyama v. California, 332 U.S. 633, 646-47 (1948), the Court made it clear that disparate treatment may not be justified because of some remote administrative benefit to the state. In other words, the rights of a class of persons may not be unduly infringed when a less restrictive statute (or regulation) that requires greater administrative effort can satisfy the same needs of the state. See also Harman v. Forssenius, 380 U.S. 528, 542-43 (1965); Carrington v. Rash, 380 U.S. 89, 96 (1965).

Plaintiffs do not argue that the government must grant benefits to all Indians no matter what their status might be. It is certainly arguable, for example, that an Indian who has achieved social and economic independence in Anglo society might be treated differently from those who are still tied to the life and culture of the reservation. Accepting, arguendo, the propriety of a regulation that would deny benefits to an out-of-work New York attorney who happens to be an Indian [but cf. Martin, Adjustment Among American Indians in an Urban Environment, 23 Human Organizations 290 (1964)], it is nonetheless apparent that less drastic means are available to promote that policy. The doctrine of less drastic means received its most recent recognition by the Supreme Court in Shapiro v. Thompson, supra., and its application to this case is discussed below in Part IV.

# (2) Relevant Differences Between Classes

In the case at bar, Plaintiffs are distinguishable from the other members of the tribe only because they live some ten miles from the legal boundary of the Papago Reservation. They are, as the agreed statement of facts indicates, by language, culture and birth pure Papago Indians. (And see Exhibit "A" herein). The question for decision is therefore whether a Papago Indian living in Indian Village in Ajo can constitutionally be deprived of benefits given to those members of the tribe who reside on the reservation ten miles away (cf. Exhibit "B").

At the outset it should be noted that the Plaintiffs live within the historic boundaries of Papago County or "Papagueria":

Eastern capital was enlisted; several companies were formed; mills and furnaces were put in operation; and for some six years, in the face of great obstacles -notably that of expensive transportation-the southern mines were worked with considerably success and brilliant prospects, until interrupted by the war of the rebellion, the withdrawal of troops, and the triumph of the Apaches in 1861. The mining properties were then plundered and destroyed, many miners were killed, and work was entirely suspended. not to be profitably resumed in this region for many years. During this period the Ajo copper mines in Papagueria were also worked with some success; and on the lower Gila from 1858 gold placers, or dry washings, attracted a thousand miners or more, being somewhat profitably worked for four years, and never entirely abandoned. Bancroft's History of Arizona and New Mexico 1530-1888, Horn & Wallace (1962) at page 579 [emphasis added].

As the Indian Claims Commission recently found:

25. Boundaries of the Papago Land. The Commission finds that at the date of American accession in 1854 and subsequently until taken from them, the Papago Tribe of Arizona exclusively occupied and used in Indian fashion, and hence had aboriginal title to the tract bounded and described as follows:

Commencing at a point on the International Boundary in the Tinajas Altas Mountains which divides the eastern and western drainage of those mountains (T13S and R17W Gila and Salt River Meridian); thence Northwest on a line down the crest of the Tinajas and Gila Mountains to the 3141 foot peak on the border of the Yuma land as found in Docket No. 319; thence East to the Mohawk Mountains peak of 2900 feet in T10S R13 Gila and Salt River Meridian; thence Northwest along the crest of the Mohawk

Mountains to Mohawk Pass; thence East to the present town of Gila Bend; thence East Southeast on a line through Lost Horse Tank to the peak of Table Top Mountains in T8S R2E, thence East to the northwest corner of the Papago Indian Reservation in R3E; thence East along the northern border of that reservation to its northwest corner in T7S; thence on a line East-Southeasterly to Picacho Peak and to Red Rock, Arizona; thence East to the peak of Oracle; thence in a southerly direction on a line following the ridge dividing the waters which flow into the San Pedro River from the waters which flow into the Santa Cruz River to the International Boundary Line; thence West and Northwest along the International Boundary Line to the point of beginning.

The following areas are excluded to the extent not taken by the Defendant:

- a. The San Xaiver del Bac Reservation;
- The Papago Indian Reservation as enlarged by the post-1917 additions enumerated in Finding No. 24;
- c. Confirmed Spanish and Mexican land grants.

The Papago Tribe of Arizona v. The United States of America, No. 345, Indian Claims Commission (Interlocutory Order of September 10, 1968), p. 422.

Plaintiffs are, in terms of the Papago culture, indistinguishable from all other Papagos who have not left "Papagueria". It would not be improper for this Court to hold on that ground alone that distinctions based on different places of residence within Papagueria cannot withstand constitutional scrutiny. Certainly the government would not argue that benefits could be paid only to those Papagos who reside at Sells, the capital of the Tribe.

Of more significance, however, is the fact that Plaintiffs are not emancipated Papago living in an Anglo environment: 1) Indian Village is just what its name implies; and 2) the Plaintiffs are Papagos who speak only their native language. To classify such persons solely

on the ground that they do not live on a reservation is plainly irrational, as a reading of Exhibit A demonstrates.

# (3) The Impact of the Discrimination

The impact of the discrimination is evident in this case. Plaintiffs, who were not eligible for state welfare benefits during the copper strike, were without financial support for their family. To compare them to Anglos and English or Spanish-speaking Papagos who felt the impact of the strike is not impressive since those classes of people possess a social mobility unattainable by Plaintiffs. The effect upon Plaintiffs' general welfare is evident and the infringements of their constitutionally protected rights will be demonstrated below.

#### Ш

DEFENDANT'S CLASSIFICATION AFFECTS PLAINTIFFS' FUNDAMENTAL RIGHTS AND ACCORDINGLY REQUIRES A SHOWING OF COMPELLING GOVERNMENTAL INTEREST.

The case at bar is facially distinguishable from Shapiro, supra, on two grounds: 1) Plaintiffs did not move into the state; and 2) there is no "durational" requirement involved in this case. Both of those distinctions are irrelevant to the disposition of this case.

As was noted above, Shapiro requires the government to show a compelling justification for a classification that places a burden upon the exercise of a fundamental right. Plaintiffs have exercised their constitutional right to travel from a former residence to a new one, and because they have done so, they are classified, so far as BIA general assistance is concerned, as non-reservation Indians who are not entitled to benefits. In order to support such a classification the Defendant must show a compelling justification that is not readily apparent. This is not a case where the Plaintiffs have moved out of the Defendant's jurisdiction, as would be so if state-

to-state travel were involved.\* Indeed, the statutory authorization gives jurisdiction to Indians throughout the United States. See Argument I, supra. But in addition to penalizing Plaintiffs' prior movement, the challenged regulation constitutes an even more onerous present burden. The right to travel necessarily implies the right to remain where one has made his home. Yet the plain urging of the regulation is to move Indians such as Plaintiffs back to the reservation in order to obtain benefits from the BIA. The burden upon the right to travel thus created is subtle but nonetheless real.

#### TV

LESS DRASTIC MEANS ARE AVAILABLE TO PROMOTE THE OBJECTIVES OF THE CHALLENGED REGULATION.

In Shapiro v. Thompson, supra, the Supreme Court rejected the appellants' contention that the one-year residence requirement served to protect against fraud:

Similarly, there is no need for a State to use the one-year waiting period as a safeguard against fraudulent receipt of benefits; for less drastic means are available, and are employed to minimize that hazard. 89 S.Ct. at 1333 [emphsis added].

The doctrine of "less drastic means" has been the subject of recent scholarly comment. See: Note, Less Drastic Means and the First Amendment, 78 Yale L.J. 464 (1969); Struve, The Less-Restrictive-Alternative Prin-

<sup>\*</sup> The mere fact that Plaintiffs are involved in movement within the state would not seem to serve to distinguish the case from the interstate movement cases. The right is freedom of movement, not interstate movement; although the decided cases have involved interstate or international travel, the language used would preclude distinctions based on where a person seeks to go. See, e.g., Kent v. Dulles, 357 U.S. 116 (1958); Schachtman v. Dulles, 225 F.2d 938 (1955); Chaffee, Three Human Rights in the Constitution of 1737, (1956) pp. 171-191. In Shapiro, the Court declined to rest the right to travel upon a particular clause of the Constitution but affirmed nonetheless its continuing vitality. See 89 S.Ct. at 1829.

ciple and Economic Due Process, 80 Harvard L.R. 1463 (1967); Wormuth & Merkin, The Doctrine of the Reasonable Alternative, 9 Utah L.R. 254 (1964), and has been applied by the Supreme Court in a number of cases dealing with fundamental rights prior to Shapiro. See, e.g., Griswold v. Connecticut, 381 U.S. 479, 485, 497-498, 503-504 (1965); Aptheker v. Secretary of State, 378 U.S. 500, 507-508 (1964); Sherbert v. Verner, 374 U.S. 398, 406-409 (1963); Shelton v. Tucker, 364 U.S. 479, 487-490. The doctrine has recently been summarized in the following language:

[L] anguage appearing in non-first amendment decisions has stood for the doctrine that the government, when it has available a variety of equally effective means to a given end, must choose the measure which least interferes with individual liberties. 78 Yale L.J., supra, at 464 [emphasis added].

Less drastic means are available to effectuate the interest of the government in preventing unnecessary welfare expenditures. The Plaintiffs do not argue that the government is constitutionally compelled to extend benefits to any citizen of Indian ancestry, no matter how emancipated he may be, simply because he is an Indian. However, to seek to promote that objective by automatically excluding all Indians who do not live on an established reservation must necessarily, as it does in this case, bring within the prohibition many Indians who are in no way distinguishable from their brothers on the reservation. By language, culture, and economic condition, Plaintiffs are members of the Papago community and are certainly distinguishable from the emancipated Indian that the government may reasonably seek to exclude. For example, 42 CFR 36.12 provides a reasonable alternative means of determination:

[Health services are available] to persons of Indian descent belonging to the Indian community served by the local facilities and program . . . an individual [is] within the scope [of the program] . . . if he is regarded as an Indian by the community in which he lives as evidenced by such factors as tribal mem-

bership, enrollment, residence on tax-exempt land, ownership of restricted property, active participation in tribal affairs, or other relevant factors in keeping with the general Bureau of Indian Affairs' practices in the jurisdiction.

Less drastic means which do not infringe upon Plaintiffs' fundamental right to move through their historic land are available to protect the legitimate interests of the government. In accordance with the above-cited cases, the Defendant should be required to utilize them.

#### V

#### CONCLUSION

Respectfully submitted,

- /s/ Roger C. Wolf ROGER C. Wolf Papago Legal Services Sells, Arizona
- /s/ Winton D. Woods, Jr. WINTON D. WOODS, JR. Associate Counsel Papago Legal Services Sells, Arizona

<sup>\*</sup>It is perhaps worthy of note that Plaintiff Ruiz appears to meet the requirements of this section.

#### APPENDIX A

The legislative history of the Snyder Act, Title 25 U.S.C. § 13, 42 Stat. 208, indicates only the concern of Congress toward the American Indian. The following comments are illustrative:

1. H.R. Rep. No. 275, 67th Congress, 1st Sess. 2:

This is a bill to make in order appropriations for bureaus that have been added to the Indian Service since the bureau was inaugurated in 1838, which have thus become integral parts of the service, nearly all of which have been appropriated for from year to year and which will continue, in all probability, as long as the bureau exists. Therefore the committee has deemed it wise to present a bill which will make in order these appropriations which have hitherto been subject to a point of order.

 61 Congressional Record 4659-4660 (remarks of Mr. Kelly):

I am opposed to legislating on the point-of-order principle, where one man can prevent action by an entire body, and therefore I shall not oppose this measure. I sincerely hope, however, that it will give us the opportunity to get down to the fundamentals of our Indian system and inspire us to constructive remedies for an intolerable situation.

3. Ibid. at 4660-4661:

The shame of broken Government promises of the distant past is overshadowed by the deliberate and long-continued effort to hold these Indians in chains against the express will of the lawmaking body. Mr. Chairman, the Indian Bureau has multiplied its activities, its employees, and its expenditures many fold in 30 years and has actually presented a solution of the problem. It has held to all the Indians under its care and has reached out for others who had been self-supporting and living free from its restrictions. Once corralled by the bureau, it has been an

almost impossible task for an Indian to break loose from a system which, by its very nature, degenerated, degraded, and destroyed. The Indians have been kept prisoners on reservations, under arbitrary control and without personal and property rights.

#### 4. Ibid. at 4662:

Now, we have been hothousing the Indians for a century, and there never was a normal Indian who could not have been made into a competent, self-supporting individual in the 21 years required to make a competent citizen of a child born to any American parents. But the average Indian is not self-supporting, and as long as the present system continues he cannot become self-supporting. His opportunities are bounded by the reservation and there is no chance for his development. His chances to make money are in the hands of agents and officials who thrive upon a system which depends upon his being a non-supporting, incompetent individual.

#### 5. Ibid. at 4663:

The bureau depends upon the retention of these Indians in the position of helpless wards, huddled together on reservations, and therefore every effort is made to hold to the system. The Indians are encouraged to remain on the reservation. If any are educated elsewhere, they are encouraged to return. They are taught that their homes, their property, and their future prosperity lie within the confines of the reservation. If a young Indian marries, his reservation-born child has a place on the tribal rolls and a share in the funds locked up in the Treasury. If his child is born outside the reservation, it loses any claim to a share in the pot at the end of the bureau rainbow. There are many inducements held out.

# 6. Ibid. at 4670 (remarks of Mr. Hill):

The census of 1910 showed an Indian population of 304,950. These Indians mostly live on Government reservations, which Secretary of the Interior Lane

- aptly designated as "little more than expanded and perhaps somewhat idealized orphan asylums".
- 7. Other comments are to be found at 61 Congressional Record at 4664 (Mr. Kelly), 4670 (Mr. Hill), 4673 (Mr. Burton).

#### EXHIBIT A

# AFFIDAVIT OF LARRY R. STUCKI

# DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ARIZONA

No. Civil 2408-Tuc.

RAMON RUIZ and ANITA RUIZ, for themselves and all others similarly situated, PLAINTIFFS

vs.

STEWART L. UDALL, Secretary of the Interior, DEFENDANT

#### AFFIDAVIT

I have been asked by Papago Legal Services to prepare a statement concerning the nature of the off-reservation Papagos in Arizona in general and the Indian

population of Ajo, Arizona, in particular.

My background in Indian matters is as follows: In 1965 I received my M.A. degree in anthropology from U.C.L.A. and then went to the University of Colorado where in 1967 I completed my course work for the Ph. D. degree in anthropology and passed the required comprehensive examination. During the summer of that year I served as Field Director for the demographic and sociocultural census conducted by the Public Health Service, Health Program System Center, on the Papago reservation. I supervised the Indian field interviewers in the districts of Pisinemo and Gu Vo. That fall I began my own field work, studying the Indian community in Ajo. Arizona, while at the same time extending the census work for the U.S. Public Health Service into the same community. After a nine month stay in Ajo, in the summer of 1968 I again returned to the main reservation but this time I served as Field Director for the remaining portion of the off-reservation Papago census in the towns and farm areas north and east of the Sells reservation. In mid-September, 1968, I returned to the University of Colorado, where I am now completing my doctoral dissertation on the subject of the off-reservation Papagos. I am also currently a teaching assistant in anthropology at the University of Colorado and I am a consultant to a comprehensive health planning training program in Denver.

During all of this time I became intimately acquainted with many of the off-reservation Papagos and learned much about the problems they face in a social environment that has never really accepted them as permanent members. The example of Ajo vividly illustrates this

dilemma.

Ajo's Indian population is composed of several different tribes but the vast majority of the Indians there are Papagos. The Papagos in Ajo can be divided into two categories: (1) those who either left the reservation during their lifetime or are sons and daughters of reservation-born parents, and (2) those whose ancestors in historic times never lived on what is now the reservation. This latter group is largely composed of Mexican Papagos, including decendents of the so-called "Sand" Papagos, many of whom have white as well as Indian ancestry. The Sand Papagos occupied much of the land west of Ajo prior to the arrival of the white man in the region.

The first modern study of this Indian community was begun by Jack O'Brien Waddell in 1963 as a major subdivision of his work for his Ph. D. dissertation. Completed in 1966, it was entitled "Adaptation of Papago Workers to Off-Reservation Occupations." At that time, the Phelps Dodge Corporation, which still maintains rather strict control over many aspects of life in Ajo, had begun to take the first steps toward breaking down the very rigid racial segregation that over the years had been maintained in company housing. However, as Waddell (1966:148) points out, "there has been a tendency for the segregated ethnic communities to selectively main-

tain their ethnic identifications." I found this to be true

in 1968 as well.

This physical separation is only indicative of the greater social separation that exists between most members of the Papago community and the other ethnic groups living in Ajo. During the many interviews I obtained in Ajo's "Indian Village," very few Papago Indians considered Ajo to be their real home and almost all wished to return to the reservation upon retirement from the mine. Many members of the village viewed living in Ajo as a necessary but temporary evil tolerated only for the purpose of earning money. There was also a lack of cohesiveness among members of the village in spite of the creation of a somewhat artificial inter-tribal council backed by the company. This was the observation of Waddell (1966:377-378):

During the periodic shutdowns, most Papagos in the Indian Village return to their various kinship villages on the reservation; or reservation relatives frequently come to visit in Ajo. The vital kinship links are still largely in terms of kinship villages, not the Ajo village.

In my interviews I discovered that many of the Papagos still maintain and frequently visit homes on the reservation. Many still have cattle there and some even farm there. During the summer many wives and children spend long periods of time living on the reservation. Many of the miners attend reservation dances and other ceremonies, driving to the reservation after work ends in the afternoon and returning early the next morning to Ajo. Some miners still vote in district elections on the reservation and many seek medical care there. Through the years many of the miners who have either been fired or laid off have returned to the reservation. Thus even some of the most "acculturated" Ajo Indians still maintain very close ties to the reservation. (In my forthcoming dissertation I will be attempting to quantify the above statements.)

During the prolonged strike of the copper miners these ties were frequently strengthened and even extended. During this time of crisis, the members of the Indian Community often used the reservation as a place of refuge and occasionally as a source of food, money, and medical care.

On March 7, 1968, I was able to interview Ramon Ruiz, his wife, and Ramon Ruiz, Jr., about the effects of the strike on their family. (This interview was in the regular course of my work and long before I heard of this law suit.) With his son acting as interpreter, he told me that the whole family returned to South Komelik during the whole month of August, 1967, and that they had returned to South Komelik once or twice a month during the remainder of the strike, staying in Ajo only because one child, Mary Ann, was still attending school there.

Ramon Ruiz informed me that he still maintained his home in South Komelik and that he planned to return there in 4 years when he retires. He had never thought of Ajo as being his real home. His poor command of the English language, in spite of having lived in Ajo for 28 years, tended to confirm this. His son did much of the talking and interpreted for his father frequently. Subsequent to this interview, I learned that when the Ruiz' other son was killed in military service in Viet Nam, funeral services were held by the family in the church in Sells.

In summary, Ramon Ruiz, and most of the other Papagos in Ajo except the "Sand" Papagos, view themselves as being only temporary residents of Ajo. They think of themselves as being permanent residents of the reservation and permanent members of the Papago Tribe. Many of them participate actively in some reservation programs in spite of the difficulties work at the mine presents. Most desire strengthened ties to the reservation and a chance to participate more fully in reservation programs which are often denied them because of their off-reservation residence. Only a small minority seek complete integration into the dominant off-reservation complex. The siren song of the reservation, in most cases, prevents the complete severance of the umbilical cord to the homeland of these people.

STATE OF COLORADO )
SS.
COUNTY OF BOULDER )

On the 27th day of November, 1968, before me, Carol Fernandez, a notary public by law authorized to administer oaths and affirmations, personally appeared LARRY R. STUCKI, and being by me first duly sworn, deposes and says that he is the author of the above affidavit, and that the same is true of his own knowledge, except as to those matters stated upon information and belief, and as to those matters he believes them to be true.

/s/ Larry R. Stucki LARRY R. STUCKI

SUBSCRIBED AND SWORN to before me this 27th day of November, 1968.

/s/ Carol Fernandez

Notary public in and for the County of Boulder, state of Colorado, and by law authorized to administer oaths and affirmations. My commission expires the —— day of ————, 1968.

My Commission expires September 15, 1971

#### EXHIBIT B

#### AFFIDAVIT OF ELEE R. SAM

# IN THE DISTRICT COURT OF THE UNITED STATES

No. Civil 2408-Tuc.

RAMON RUIZ and ANITA RUIZ, for themselves and all others similarly situated, PLAINTIFFS

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WALTER J. HICKEL, Secretary of the Interior, DEFENDANT

#### AFFIDAVIT

My name is Elee R. Sam. I am a Papago Indian and I have resided at the Gila Bend Indian Reservation since 1959. From August, 1967 until February, 1968, I was the community development worker for the Papago community at the Gila Bend reservation. As a community development worker (a paid employee of the Papago Office of Economic Opportunity, a program funded under the War on Poverty) I became very familiar with the economic and social problems of the Gila Bend Papago Indians. In February of 1968, I was elected to the position of Vice-Chairman of the Papago Tribe, but I have maintained my residence at the Gila Bend reservation. I was re-elected Vice-Chairman in February of 1969.

On December 25, 1966, twenty-four Papago Indian families from the Gila Bend reservation village of Sil Murk moved from that village to a new housing development, now called the San Lucy community, one quarter of a mile north of the town of Gila Bend. The San Lucy community is located on land that was previously private, non-reservation land, but by act of Congress, and in consideration for the building of the Painted Rock Dam on

the Gila Bend reservation, new land was set aside for the housing development for the community. The community of San Lucy is now legally a part of the Gila Bend reservation. Only those families who owned a house at Sil Murk were entitled to receive a new house at the San Lucy village. Consequently many families who staved with friends or relatives at Sil Murk village were not given a house at San Lucy village and were forced to move off the reservation because of the lack of other suitable housing or locations for housing. Most of the Papago families left out of the San Lucy village moved to the town of Gila Bend proper. There were approximately nineteen families thus forced to move to Gila Bend. Some of them joined other Papago families who had lived in the town of Gila Bend for some time in a rural slum on the wrong side of the railroad tracks known as the Indian Village. The Indian Village in Gila Bend now has about eight Papago families. They struggle to survive in shacks without any indoor plumbing and they must haul their own water from a faucet at the Southern Pacific railroad depot. Only one or two houses at the Indian Village have electricity. The 24 houses at San Lucy village have all modern utilities. Bureau of Indian Affairs general assistance or Tribal Work Experience Program (TWEP) welfare grants have been available only to those residing at the San Lucy village, since this is the only inhabited part of the reservation. This is in spite of the extreme poverty and lack of employment for Papagos in the Gila Bend vicinity, many of whom do not speak English. About one dozen Papago individuals or families have sought to build adobe houses on the San Lucy land, in order to rejoin the Papago community and to take advantage of Bureau welfare assistance. The Bureau of Indian Affairs, however, has discouraged and effectively prevented this on the grounds that it would conflict with plans for future housing projects at the San Lucy village. As a result, about eleven Papago families have moved into houses at San Lucy to share the houses with friends or relatives. This of course has resulted in crowding but it has been the only way for these people to obtain financial assistance either through general assistance or through the Tribal Work

Experience Program jobs.

Three years ago Mr. Dewey Ortega, the representative to the Tribal Council from the Gila Bend district, and I, began urging the Bureau of Indian Affairs to recognize the Indian village in Gila Bend as a Papago village so that residents of the Indian village could obtain BIA general assistance or TWEP jobs. Our efforts have met with no success.

The denial of welfare benefits to Papagos who used to live in the old Sil Murk village, and to Papagos in general who did not have the good luck to get a house at San Lucy, has caused a good deal of friction between the Papagos at San Lucy and the Papagos in Gila Bend proper. Not only were the Gila Bend Papagos denied a house, they are also denied subsistence benefits from BIA welfare. So the lucky ones have modern, comfortable houses, a sense of community, and welfare assistance when they need it, while those left out of San Lucy are denied everything.

STATE OF ARIZONA )
SECOUNTY OF PIMA )

On the 4 day of June, 1969, before me, Matilda S. Juan, a notary public by law authorized to administer oaths and affirmations, personally appeared ELEE R. SAM, and being by me first duly sworn, deposes and says that he is the author of the above affidavit, and that the same is true of his own knowledge, except as to those matters stated upon information and belief, and as to those matters he believes them to be true.

/s/ Elee R. Sam ELEE R. SAM

SUBSCRIBED AND SWORN to before me this 4 day of June, 1969.

/s/ Matilda S. Juan My Commission expires Apr. 23, 1972

#### EXHIBIT C

# AFFIDAVIT OF EVER L. HANSON

#### STATE OF ARIZONA

# DEPARTMENT OF PUBLIC WELFARE

#### PIMA COUNTY

EVER L. HANSON County Director 151 West Congress Tucson, Arizona 85701

[Received Nov. 12, 1968]

November 8, 1968

Mr. Roger C. Wolf Papago Office of Economic Opportunity Legal Services Program Sells, Arizona

Dear Mr. Wolf:

Re: Mr. Ramon Ruiz

This is in reply to your letter of October 29, 1968, regarding State of Arizona Public Welfare benefits available to Mr. Ramon Ruiz during the mine strike.

During the strike period, striking miners with Union membership, receiving strikers' benefits, were not eligible for either General Assistance or Emergency Relief from the Department of Public Welfare. However, striking miners were eligible to draw Surplus Commodities under the Department of Public Welfare Surplus Commodities Distribution Program, provided the eligibility requirements for this program were met.

The records of the Pima County Welfare Office show that Mr. Ramon Ruiz applied for Surplus Commodities on November 20, 1967 and was certified as eligible to receive Surplus Commodities for a ninety-day period, and on February 9, 1968, was recertified to receive Surplus Commodities for another ninety-day period.

Very truly yours,

/s/ Ever L. Hanson Ever L. Hanson County Welfare Director

ELH:gb

State of Arizona County of Pima

On this 8th day of November 1968, personally appeared before me Ever L. Hanson, known to me to be the person who executed the foregoing for the purpose contained therein.

> /s/ Marcia Eatinger Notary Public

line serve at the division by the con-

My Commission expires 7-6-1969

#### EXHIBIT D

H.R. 9621, 87th Cong., 2nd Sess. January 11, 1962

H.R. 9621, 87th CONGRESS, 2d SESSION

# IN THE HOUSE OF REPRESENTATIVES JANUARY 11, 1962

Mr. Berry introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

#### A BILL

To provide (1) that the United States shall pay the actual cost of certain services contracted for Indians in the States of Minnesota, North Dakota, South Dakota, and Wisconsin; and (2) for a more equitable apportionment between such States and the Federal Government of the cost of providing aid and assistance under the Social Security Act to Indians.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first section of the Act entitled "An Act authorizing the Secretary of the Interior to arrange with States or Territories for the education, medical attention, relief of distress, and social welfare of Indians, and for other purposes", approved April 16, 1934, as amended (25 U.S.C., sec. 452), is amended by inserting "(a)" immediately after "That" and by adding at the end thereof the following new subsection: "(b) Whenever, under authority of subsection (a) of this section, a contract is entered into with the State of Minnesota, the State of North Dakota, the State of South Dakota, or the State of Wisconsin, or with any political subdivision of any such State, or with any State corporation, agency, or institution of such a State, such contract shall provide that the United States shall pay the actual cost, including administrative costs, of the service to be furnished or performed by the State, political subdivision, corporation, agency, or institution under such contract."

SEC. 2. In carrying out the Act entitled "An Act authorizing appropriations and expenditures for the administration of Indian Affairs, and for other purposes", approved November 2, 1921 (25 U.S.C. 13), every person domiciled in the State of Minnesota, the State of North Dakota, the State of South Dakota, or the State of Wisconsin who is a full-blooded Indian, or is of mixed blood and enrolled on an Indian reservation or agency roll, or is of mixed blood if the proportion of Indian blood is one-fourth or more, or is regarded as an Indian within the community where he resides whether on or off a reservation, or who was on January 1, 1957, enrolled, registered or in any way listed by the Bureau of Indian Affairs as an Indian for any purpose shall be held and considered to be an enrolled Indian for the purposes of providing education, medical assistance, agricultural assistance and social welfare aid, including relief of distress. On or before July 1, 1957, the Bureau of Indian Affairs shall submit to the agencies of such States with which it contracts for the provision of education, medical assistance, agricultural assistance and social welfare aid (including relief of distress) to Indians a register of all persons in each such State who were, on January 1, 1957, enrolled, registered or in any way listed by the Bureau of Indian Affairs as an Indian for any purpose.

SEC. 3. Beginning with the quarter commencing on July 1, 1957, the Secretary of the Treasury shall pay, for each quarter, to the State of Minnesota, the State of North Dakota, the State of South Dakota, and the State of Wisconsin (from sums made available for making payments to the States under sections 3(a), 403(a), 1003(a), and 1403(a) of the Social Security Act) an amount, in addition to the amounts prescribed to be paid to each such State under such sections (computed and paid at the same time and in the same manner as are the amounts payable under such sections), equal to 80 per centum or (a) the total amounts of contributions by each such State toward expenditures during such quarter by such State, under the State plans approved under the Social Security Act for old-age assistance, aid to dependent children, aid to the blind, and aid to the permanently and totally disabled, to every person who is a full-blooded Indian, or is of mixed blood and enrolled on an Indian reservation or agency roll, or is of mixed blood if the proportion of Indian blood is onefourth or more, or is regarded as an Indian within the community where he resides whether on or off a reservation, or who was on January 1, 1957, enrolled, registered or in any way listed by the Bureau of Indian Affairs as an Indian for any purpose, with respect to whom payments are made to such State by the United States under sections 3(a), 403(a), 1003(a), and 1403(a), of the Social Security Act, not counting so much of such expenditure to any individual for any month as exceeds the limitations prescribed in such sections, and (b) that portion of the total amounts the Secretary of Health, Education, and Welfare has found to have been necessary for such State to expend during such quarter for the proper and efficient administration of such State plans, which is attributable to the administration of such State plans with respect to such Indians. On or before July 1, 1957, the Bureau of Indian Affairs shall submit to the State agencies responsible for the administration of such State plans in each of such States a register of all persons in such State who were, on January 1, 1957, enrolled, registered or in any way listed by the Bureau of Indian Affairs as an Indian for any purpose.

#### EXHIBIT E

H.R. 6279, 88TH CONG., 1ST SESS. MAY 14, 1968

H.R. 6279, 88th CONGRESS, 1st SESSION

# IN THE HOUSE OF REPRESENTATIVES MAY 14, 1963

MR. BERRY introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

### A BILL

To provide (1) that the United States shall pay the actual cost of certain services contracted for Indians in the States of Minnesota, North Dakota, South Dakota, Washington, Idaho, and Wisconsin; and (2) for a more equitable apportionment between such States and the Federal Government of the cost of providing aid and assistance under the Social Security Act to Indians.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first section of the Act entitled "An Act authorizing the Secretary of the Interior to arrange with States or Territories for the education, medical attention, relief of distress, and social welfare of Indians, and for other purposes", approved April 16, 1934, as amended (25 U.S.C. 452), is amended by inserting "(a)" immediately after "That" and by adding at the end thereof the following new subsection:

"(b) Whenever, under authority of subsection (a) of this section, a contract is entered into with the State of Minnesota, the State of North Dakota, the State of South Dakota, the State of Washington, the State of Idaho, or the State of Wisconsin, or with any political subdivision of any such State, or with any State corporation, agency, or institution of such a State, such contract shall provide that the United States shall pay the actual cost, including administrative costs, of the service to be furnished or performed by the State, political subdivision, corporation, agency, or institution under such contract."

SEC. 2. In carrying out the Act entitled "An Act authorizing appropriations and expenditures for the administration of Indian affairs, and for other purposes". approved November 2, 1921 (25 U.S.C. 13), every person domiciled in the State of Minnesota, the State of North Dakota, the State of South Dakota, the State of Washington, the State of Idaho, or the State of Wisconsin who is a fullblooded Indian, or is of mixed blood and enrolled on an Indian reservation or agency roll, or is of mixed blood if the proportion of Indian blood is onefourth or more, or is regarded as an Indian within the community where he resides whether on or off a reservation, or who was on January 1, 1963, enrolled, registered, or in any way listed by the Bureau of Indian Affairs as an Indian for any purpose shall be held and considered to be an enrolled Indian for the purposes of providing education, medical assistance, agricultural assistance, and social welfare aid, including relief of distress. On or before July 1, 1963, the Bureau of Indian Affairs shall submit to the agencies of such States with which it contracts for the provision of education, medical assistance, agricultural assistance, and social welfare aid (including relief of distress) to Indians a register of all persons in each such State who were, on January 1, 1963, enrolled, registered, or in any way listed by the Bureau of Indian Affairs as an Indian for any purpose.

SEC. 3. Beginning with the quarter commencing on July 1, 1963, the Secretary of the Treasury shall pay quarterly to the State of Minnesota, the State of North Dakota, the State of South Dakota, the State of Washington, the State of Idaho, and the State of Wisconsin (from sums made available for making payments to the States under sections 3(a), 403(a), and 1003(a) of the Social Security Act) an amount, in addition to the amounts prescribed to be paid to each such State under such sections, equal to 80 per centum of the total amounts of contributions by each such State toward expenditures during the preceding quarter by such State, under the State plans approved under the Social Security Act for old-age assistance, aid to families with dependent children, and aid to the needy blind, to every person who is a full-blooded Indian, or is of mixed blood and enrolled on an Indian reservation or agency roll, or is of mixed blood if the proportion of Indian blood is onefourth or more, or is regarded as an Indian within the community where he resides whether on or off a reservation, or who was on January 1, 1963, enrolled, registered, or in any way listed by the Bureau of Indian Affairs as an Indian for any purpose, with respect to whom payments are made to such State by the United States under sections 3(a), 403(a), and 1003(a), respectively, of the Social Security Act, not counting so much of such expenditure to any individual for any month as exceeds the limitations prescribed in such sections. On or before July 1, 1963, the Bureau of Indian Affairs shall submit to the State agencies responsible for the administration of such State plans in each of such States a register of all persons in such State who were, on January 1, 1963, enrolled, registered, or in any way listed by the Bureau of Indian Affairs as an Indian for any purpose.

#### EXHIBIT F

# INTRODUCTION TO THE INDIAN AFFAIRS MANUAL

BUREAU OF INDIAN AFFAIRS MANUAL

O BIAM 1.1

# INTRODUCTION

# Bureau Manual System

1.1 Purpose: The Bureau Manual System is the prescribed medium for publication of all policies, procedures, and instructions and selected other information which have general and continuing applicability to Bureau of Indian Affairs activities. The primary objectives of the system is to communicate instructions effectively.

1.2 System Description: The Bureau directives system consists of two major components, Chapter I, Title 25, of the Code of Federal Regulations and Bureau of Indian Affairs Manual.

Code of Federal Regulations: Directives which relate to the public, including Indians, are published in the Federal Register and codified in 25 Code of Federal Regulations (25 CFR). These directives inform the public of privileges and benefits available; eligibility qualifications, requirements and procedures; and of appeal rights and procedures. They are published in accordance with rules and regulations issued by the Director of the Federal Register and the Administrative Procedures Act as amended. Assistance in complying with the requirements of this Act is available from the Branch of Management Research. Instructions and guidance on the preparation of directives published in the Federal Register and codified in 25 CFR are contained in Part 303 of the Departmental Manual and the handbook supplement to the Part entitled "How to Prepare Federal Register Documents", in the Federal Register Handbook on Document Drafting. and in 33 BIAM 5.

Bureau of Indian Affairs Manual: Policies, procedures, and instructions which do not relate to the public but are required to govern the operations of the Bureau are published in the Bureau of Indian Affairs Manual (BIAM). Issuance of BIAM material in two forms (basic and supplemental) is authorized to facilitate creation, distribution and use of the manual.

The basic manual is intended to include the Bureau organization description, all delegations of authority from the Commissioner, and the general policies and procedures for each Bureau program. When used in conjunction with the CFR, it provides line and staff officers who have general management responsibilities with the basic information required for the performance of their job. When used in conjunction with the supplements, it provides program and administrative technicians the basic policy and procedural information required in the performance of their jobs.

0-1 Jun. 10, 1968

Richard K. Burke United States Attorney 5000 Federal Building Phoenix, Arizona 85025 Telephone: 602-261-3131

Richard S. Allemann Assistant United States Attorney 5000 Federal Building Phoenix, Arizona 85025 Telephone: 602-261-3131 Attorneys for defendant

#### IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

No. CIV. 2408-TUCSON (J.A.W.)

[Filed Oct. 15, 1969, Wm. H. Loveless, Clerk, United States District Court for the District of Arizona, By /s/ Louise Clelland, Deputy Clerk]

RAMON RUIZ and ANITA RUIZ, for themselves and all others similarly situated, PLAINTIFFS

28.

WALTER HICKEL, Secretary of the Interior, DEFENDANT

DEFENDANT'S SECOND MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

The defendant, as in its first memorandum, feels that the pleadings on file herein clearly establish the propriety of granting summary judgment in favor of the defendant in this case.

The entire argument in this cause centers upon the interpretation of the Snyder Act, 42 Stat. 208 (1921), 25 U.S.C. 13 (1964). Plaintiffs contend that the interpretation by the Bureau of Indian Affairs, as contained in 66 IAM 3.4A, is not justified and that such is in direct

conflict with the clear wording of the statute. The arguments presented in the original memorandum by both parties discussed at length the regulations promulgated under the Act and their effect. This memorandum will address itself to: First, the limited purpose of the Snyder Act, and second, the practice of the Bureau of Indian Affairs both prior to and after the passage of this Act.

#### The Snyder Act

The provisions of the Act are rather simple and provide that the Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise and expend monies as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for certain specified purposes. Included in the specified purposes is that of general support which is the subject of this action. Plaintiffs contend that the statute is clear and that they fall within its provisions despite the fact that they reside off the reservation. Plaintiffs further contend that even if the statute is not clear, then the rules of statutory construction would operate in their favor. It is defendant's contention that a true understanding of the single purpose of the Snyder Act based upon an examination of its legislative history eliminates the necessity to apply any other rules of statutory construction. Plaintiffs urge that the legislative history of the Act is, at best unclear. Nothing could be further from the truth as the copies of the Congressional records of the Committee of the Whole House, identified and attached as Exhibit A, clearly show. Pertinent parts of the statements contained therein shall be discussed below.

Appropriations that run ahead of authorization could be struck down by a point of order and this had been

done in previous Indian appropriation bills.

The record shows that the Snyder Act was only an authorizing act which was passed to avoid the point of order rule then in use by the House of Representatives. This can be illustrated by the comments of Representative Kelly, who was an opponent to then-existing Indian policy, which appear at pages 4659-4660:

Mr. Chairman and gentlemen of the Committee, this measure simply makes in order the items which have been carried for many years in the Indian appropriation bills. I helped to take a number of these items out of the last Indian Bill through points of order, but it was the most futile effort possible, for they were reinserted in the Senate and in the end nothing was accomplished. I am opposed to legislating on the point-of-order principle, where one man can prevent action by the entire body, and therefore I shall not oppose this measure. (Emphasis added)

and the statement of Representative Carter at pages 461-462:

Mr. Chairman and gentleman (sic) of the Committee. in view of the turn that this debate has taken and the distance it has drifted afield, it might be well enough to call attention of gentlemen to what this bill really does. This bill does not undertake the enlargement or creation of a single activity which is not now in operation by the Indian Bureau. It simply provides for making certain appropriations in order for activities which have been carried along from year to year by appropriations of money for that year without any specific authorization of the work. . . . But the difficulty is that no general authorization has been made for many of the Indian Bureau agencies. Like Topsy, 'they just growed.' An epidemic would break out on some certain reservation and without objection an item would be inserted in the current appropriation bill for its suppression and control. Next, certain Indians would be found wanting to farm but without necessary farming implements and stock, so an industrial item would be inserted and no point of order raised against that. Thus the system grew up, and these different agencies were established by the simple insertion of an appropriation in the annual appropriation act without the passage of any organic act authorizing them.

These appropriations were carried along from year to year as long as the Indian Committee had jurisdiction of appropriations without much friction. But when all appropriations were concentrated in the Committee on Appropriations then the fun began. Before this change the Indian Committee had both legislative and appropriating jurisdiction, and when that committee brought in these unauthorized items, points of order were rarely insisted upon because no committee jurisdiction was transgressed and no other committee felt sufficiently aggrieved to kick up the row. When appropriation jurisdiction was taken away from the Indian Committee and the Appropriation Committee brought in their bill carrying those unauthorized propositions that constituted a clear invasion of committee jurisdiction, the Indian Committee rebelled and its membership . . . raised considerable fuss. . . .

#### At Page 4672:

Mr. Andrews. Will this bill do anything more than to prevent points of order on the Indian appropriation bill?

Mr. Carter. Absolutely nothing else. It does not start a single additional agency in the Bureau of Indian Affairs, it does not enlarge their activities, and does not create any new activities. It does nothing more than protect the committee reporting the bill against the whims and peevishness of some Member attacking the bill."

#### At Page 4684:

Mr. Dowell. Then, as I understand the gentleman, this bill does not authorize anything not already included in the Indian appropriation act.

Mr. Snyder. It does not authorize the Bureau to do a single additional thing.

Mr. Dowell. It does not authorize anything that is not appropriated for under the present law.

Mr. Snyder. Absolutely not. It only includes those things that have become integral parts of the service.

The statements made by then Representative Carl Hayden of Arizona certainly crystallize the matter. On Page 4680 he said:

Mr. Chairman, I stated at the beginning of the session today that I reluctantly supported the bill that we now have before us for consideration. Frankness compels me to say that I was not favorably impressed with the measure the first time I read it. It then seemed to me that its purpose was to allow the Committee on Indian Affairs to appear, make its bow. and thereafter disappear from the legislative scene of action by thus abdicating all of its authority in favor of the Committee on Appropriations. I have examined the terms of the bill in the meantime and find that the grant of power to the Appropriations Committee is carefully guarded. What it actually amounts to is to authorize by law the making of the usual annual appropriations to carry on the work of the Indian Service, and nothing more. (Emphasis added)

There can be no question but that the Act was only a legislative vehicle to circumvent a burdensome parliamentary procedure. There was no need to use other than the general language of the Act "of the Indians throughout the United States." There was no need to be specific since the bill wasn't to change or add any services of the Bureau that existed at that time. When Congress spoke of Indians it meant reservation Indians. Look to Page 4679 where Representative Hayden said:

Mr. Chairman, I cannot by silence give approval to attacks upon the Indian Service by those who never saw an *Indian reservation* and who base their charges either upon half truths or anticipated information. (Emphasis added)

and at Page 4680:

Since the Indian Bureau must be retained we should make it as efficient as possible, having always in mind that its ultimate object is not to perpetuate itself but to gradually decrease its activities as the Indians cease to be wards of the Government. Within the bureau there should be a greater recognition of the fact that in many instances the interests of the Indians and their white neighbors are identical and that only by proper cooperation can both races enjoy the fullest measure of prosperity. Since the Indian is free to travel over the white man's roads. he should do his fair share of road building on the reservations. Where there is more land within a reservation than is needed for farming and grazing allotments, the surplus should be surveyed and sold to white people who are seeking homes. All of the mineral resources of every reservation should be opened to development under a proper leasing system to the mutual advantage of the Indians and those interested in mining. These are some examples of what must be accomplished if the orderly development of the Western States where the Indians reside is not to be unduly retarded. (Emphasis added)

Other references by various members of the House to reservations throughout the debate can leave little doubt that the Indian under discussion was the reservation Indian.

#### Bureau Policies

As clearly established above, the Snyder Act was not meant to change or add anything to Bureau of Indian Affairs that wasn't being done at that time. What was being done at that time in the area of general assistance? Representative Hayden on this point said at Page 4680:

The first class of items that are made in order by this bill relate to the general support and civilization, including the education of Indians. The physical support of Indians has practically ceased. There was a time some years ago when rations were issued to large numbers of Indians, both able-bodied and otherwise. This was done upon the theory that it was cheaper to feed them than to fight them. Now only the aged and infirm Indians receive such support, and the amounts allotted for that purpose are comparatively small.

Proof of the Bureau's policy in this area can be found in attached Exhibit B, which is a copy of a February 14, 1914 letter from the Assistant Commissioner of Indian Affairs to the Superintendents relative to the destitution on the reservations. It reads in pertinent part:

Recognizing the fact that at this season of the year there is a possibility that cases of destitution and suffering among the Indians might be overlooked by the Superintendent in charge of the reservation, I am calling your attention to the urgent importance of the greatest possible care on your part to see that prompt relief is afforded in every case of actual destitution on your reservation. (Emphasis added)

Exhibit C, which is Circular No. 1732 dated December 12, 1921 from the Commissioner to the Superintendents on the same subject reads in pertinent part:

Reports reaching the Office indicate that on many reservations we will have to furnish food and clothing supplies to a number of Indians during the present winter, in addition to those who constitute the regular ration list.... On some reservations there have been partial or even total crop failures and the Indians have been able to make little preparation for the winter. (Emphasis added)

In this circular is found the beginning of the administrative use of the word "jurisdiction" interchangeably with "reservation." It reads in pertinent part:

In order that we may know definitely the needs of the particular jurisdiction, you are requested to submit an immediate, detailed report as to what amount, if any, will be necessary to carry your Indians through the remainder of the present fiscal year without suffering. (Emphasis added) This language was still used eight years later as evidenced by Exhibit D which is Circular No. 2603, dated June 27, 1929, from the Commissioner to the Superintendents and reads in pertinent part:

Last year there was \$200,000 available in the reimbursable fund and it is believed that this amount has been used in a very creditable manner. In some cases the Superintendents found it unnecessary or impracticable to use the funds requested and authorized for them and in such cases the unused funds were withdrawn in order that Indian applicants on other jurisdictions might have the benefit of the money. (Emphasis added)

During the depression the Indian Service benefited from such organizations as the American Red Cross as illustrated by a series of communiques from the Commissioner to the Superintendents marked Exhibit E. Here the use of the word "jurisdiction" is used in reference to reservations. Its interchangeability can best be seen in the Circular of February 27, 1933 which reads in pertinent part:

Application will be approved by this Office and the Red Cross in quantities representing not more than 25% of the requirements of the total number of families under your jurisdiction, . . . . For instance, a reservation with a total population of 4500 Indians would have approximately 1,000 families . . . . In every case be sure to give the total population of your jurisdiction, . . . . (Emphasis added)

See also Exhibit F which is a July 17, 1933 Directive from Harry L. Hopkins, Administrator of the Federal Emergency Relief Administration notifying the State Administrators to include Indian, ward as well as non-ward, in the benefits given by that agency. Specific designation and identification with reservations was made. Bureau directives in conjunction with this program again used the language "needy Indian families under your jurisdiction." (Exhibit G)

Based on the above, it is the defendant's contention that it is evident the policy of the Bureau of Indian Affairs in response to welfare assistance was limited to reservation Indians prior to the passage of the Snyder Act and most certainly subsequent to the passage. Plaintiffs contended that it is almost "preposterous" to assume that Congress, or anyone else for that matter, is or has been for any length of time aware that the Bureau of Indian Affairs denies welfare to Indians who reside off the reservations. The fact is that Congress knows and has known for many years that the Bureau's welfare program has been limited to reservation Indians. The plaintiffs can place any interpretation they want on the recent bills introduced in Congress on this matter but the fact remains that the real purpose of these bills is to require the Federal Government to assume full responsibility for providing welfare assistance for all Indians living on or off reservations in the States of Minnesota, North Dakota. South Dakota and Wisconsin and clearly indicates congressional awareness that Snyder Act assistance is not available to off-reservation Indians.

Further evidence that Congress is and has been aware of the limitation is illustrated in Exhibit I which contains departmental reports submitted to legislative committees on various appropriation bills during the 1960's. The language of these reports has been consistent. Per-

tinent segments are:

Financial assistance to needy Indians on reservations when such assistance is not available from other sources: . . .

Major welfare problems on Indian reservations are poverty and low living standards, breakdown of family stability, neglect or inadequate care of children, and inexperience or irresponsibility in use of personal funds. The continuing primary objectives of the welfare programs are to provide: (1) Financial assistance to needy Indians on reservations when such assistance is not available from other sources. . . . (Emphasis added)

#### Summary

There can be no doubt that the Bureau's assistance program has been limited to reservation Indians, was intended to be and should be continued as such in the future. The basic principle in this matter is that there should be no distinction between Indians and non-Indians in eligibility for public services received from the States, and it is the position of the Bureau of Indian Affairs that insofar as possible Indians should have the same relationship to establish state and private welfare agencies as non-Indians and that state and local welfare departments should have the same responsibilities for providing services and assistance to Indians as they have to non-Indians in similar circumstances. Where these services are not available, the Bureau undertakes to provide them to Indians living within the boundaries of reservations insofar as it possible within its financial resources.

Respectfully submitted,

RICHARD K. BURKE United States Attorney

/s/ Richard S. Allemann
RICHARD S. ALLEMANN
Assistant United States
Attorney
Attorneys for defendant

Copy hereof mailed this 15th day of October, 1969 to:

Mr. Roger C. Wolf Papago Legal Services Box 246 Sells, Arizona 85634 Attorney for plaintiffs

/s/ Richard S. Allemann
RICHARD S. ALLEMANN
Assistant United States Attorney

### Ехнівіт А

61 CONG. REC. 4659-4691

[OMITTED]

#### EXHIBIT B

Refer in Reply to the Following: Address Only the E-Ind.

Commissioner of Indian Affairs H W S

[Received, Aug. 13, 1969, Bureau of Indian Affairs, Phoenix]

#### DEPARTMENT OF THE INTERIOR

OFFICE OF INDIAN AFFAIRS

Washington

Relief of destitution. Circular No. 827

Feb. 14, 1914

To Superintendents:

Recognizing the fact that at this season of the year there is a possibility that cases of destitution and suffering among the Indians might be overlooked by the Superintendent in charge of the reservation. I am calling your attention to the urgent importance of the greatest possible care on your part to see that prompt relief is afforded in every case of actual destitution on your reservation.

Of course, it goes without saying that where an Indian has funds, you will see to it that he is provided with actual necessities, but destitution and suffering must be prevented whether the Indian has funds or not. Such cases should be reported to the Office immediately by wire with a request for necessary authority. In extreme instances, it may be necessary to provide relief from supplies on hand, pending receipt of telegraphic authority.

You should take such means to carry out the spirit of this circular as will enable you to satisfy yourself that its requirements are complied with strictly.

/s/ E. B. Meritt Assistant Commissioner.

#### EXHIBIT C

Refer in Reply to the Following Address Only the Commissioner of Indian Affairs

# DEPARTMENT OF THE INTERIOR OFFICE OF INDIAN AFFAIRS Washington

Dec. 12, 1921

Circular No. 1732 Relief of Destitute Indians.

TO SUPERINTENDENTS OR OFFICERS IN CHARGE:

Reports reaching the Office indicate that on many reservations we will have to furnish food and clothing supplies to a number of Indians during the present winter, in addition to those who constitute the regular ration list. The gratuitous issue of rations to Indians, especially to young and able-bodied ones is to be confined to cases of absolute necessity, cases in which suffering would otherwise result. I appreciate the fact that the general industrial depression which has been more or less prevalent throughout the country has affected the Indian as well as the white. In many cases, employment is not to be had, though, on the other hand many of the Indians do not take advantage of what opportunity they may have along this line. On some reservations there have been partial or even total crop failures and the Indians have been able to make little preparation for the winter. Then, too, there are individual cases constantly arising, which, through sickness or other cause, require some assistance.

Funds at our disposal for relief purposes are practically exhausted and it is necessary that we ask Congress for an additional appropriation for general relief throughout the Service. In order that we may know definitely the needs of the particular jurisdictions, you are requested to submit an immediate, detailed report as to what amount, if any, will be necessary to carry your Indians through the remainder of the present fiscal year without suffering. Your estimate must be accompanied by a justification sufficiently complete to give Congress adequate proof that unless some such measures are taken as requested, suffering will result. When there are tribal funds to the credit of the tribe, the authorization of the necessary amount is contemplated from such funds rather than as a gratuity appropriation. You should estimate approximately the various articles of food and clothing which you will need, and the cost thereof. If you have any funds on hand which can be used for relief purposes or if you anticipate any applicable savings later in the year, you should so state.

While it is desired that all possible assistance be extended to deserving cases, in view of the present demand and necessity for economy, our estimates must be kept as low as possible. You are not, however, to take this letter as an assurance of any general assistance for any Indians, but merely as the first step in an effort to tide

them over the present hard times.

Your immediate attention is desired.

/s/ [Illegible] Commissioner.

(3750)

#### EXHIBIT D

# UNITED STATES DEPARTMENT OF THE INTERIOR

#### OFFICE OF INDIAN AFFAIRS

Washington

Circular No. 2603
Use of Reimbursable Funds.

Jun. 27, 1929

#### To Superintendents:

Last year there was \$200,000 available in the reimbursable fund and it is believed that this amount has been used in a very creditable manner. In some cases the Superintendents found it unnecessary or impracticable to use the funds requested and authorized for them and in such cases the unused funds were withdrawn in order that Indian applicants on other jurisdictions might have

the benefit of the money.

The 1930 appropriation act authorizes the use of \$450,-000 for use throughout the Service, on the reimbursable plan, but specifies that \$125,000 of it shall be available for expenditures for the benefit of Pima Indians, leaving \$325,000, or an increase of \$125,000 over last year, for general use. With the appointment of additional Directors of Agriculture and Home Demonstration Agents. there is little doubt that there will be many demands on this appropriation. With the view of giving the Indians generally the opportunity of using some of this money, should conditions warrant, if you have not already done so, you should submit an estimate of the amount which you think can be well placed at your jurisdiction, with a full justification for its use. While there is no assurance that any amount which you may name will be allowed, an estimate from each Superintendent is desired in order to consider the needs throughout the Service so that the funds can be placed where the best use will be made of them.

In regard to making loans for the support of old, disabled, or indigent Indians, it is not the plan to eliminate the ration roll through the use of the reimbursable fund, nor to use a large amount for support purposes. The appropriation was made primarily for industrial assistance, and the clause in regard to loans on account of age, disability, or indigence was inserted for the purpose of taking care of such cases as may arise for which no provision can otherwise be made.

Please submit your reply to reach this Office not later

than July 15, 1929.

Sincerely yours,

/s/ [Illegible] Commissioner.

#### EXHIBIT E

## UNITED STATES DEPARTMENT OF THE INTERIOR

#### OFFICE OF INDIAN AFFAIRS

Washington

F-0

Circular No. 2885

Availability Red Cross cotton.

Oct. 4, 1932

To all Superintendents:

As you may know, recent legislation made available for distribution through the American Red Cross, an additional 45,000,000 bushels of relief wheat from Farm Board stocks, together with a quantity of cotton. Most superintendents have heretofore availed themselves of the opportunity to secure relief flour and are familiar with the procedure to be followed.

With regard to the cotton which is now made available, distribution is being made by the Red Cross in the form of cotton goods, with possibly some manufactured articles of clothing to be distributed later. The types of

cloth now available are as follows:

PRINTS, suitable for dresses and boys' suits; GINGHAM, suitable for dresses and boys' suits; MUSLIN, Suitable for slips; OUTING FLANNEL, suitable for night clothing; SHIRTING, suitable for men's and boys' shirts; BIRDSEYE, suitable for diapers.

Various uses other than those mentioned above may

occur to you.

In order that needy Indians may participate in the distribution of the cotton goods, it is suggested that you send to the Office at once an estimate of the yardage of each type of cloth that will be needed for issue to needy Indians under your jurisdiction. The procedure to be followed in requesting cotton goods is exactly the same as

that followed in the case of relief flour and crushed wheat. Requests will be submitted by the various super-intendents to the Washington office where they will be checked, entered on the proper forms and sent in turn to the Washington headquarters of the Red Cross. Since the quantity of cotton goods is limited and the demands are great, your request should be gotten into the Office at the earliest possible moment.

Definite instructions have been given by the Red Cross that any cotton goods or clothing which may be furnished for use of the needy are under no circumstances to be sold or distributed in a way which could be so construed. The cloth and clothing are not to be used in work relief projects; that is, issued in return for service rendered.

Each jurisdiction locally handling cloth and clothing distributions will be accountable for the use of the cloth and clothing in accordance with the letter and spirit of the act of Congress, and will likewise be responsible for all charges after delivery of the cloth and clothing to the original consignee. The expense of production of garments after the cloth is furnished must be met locally.

The number of families actually under the care of the agency that will make the clothing distribution should be the approximate basis for determining quantities. Naturally not every family will require cloth or clothing. Applications should not exceed an average of 20 yards of material per family at the present time. For instance, if you have 400 families which are to participate in the distribution, the total number of yards of cloth requested is not to exceed 8,000. The number of families involved should always be stated when the original request is made. The necessity for stating the number of families also applies to requests for flour.

Cotton goods may be issued to mission schools on the same basis as flour was issued; that is, only those schools which have taken in additional pupils as a relief measure

are entitled to such assistance.

Sincerely yours,

/s/ [Illegible] Commissioner.

# UNITED STATES DEPARTMENT OF THE INTERIOR

# OFFICE OF THE SECRETARY Washington

F-O

Circular No. 2892

Availability ready made garments.

Oct. 22, 1932

To all Superintendents:

Information has been received from the Washington headquarters of the American Red Cross that certain ready made garments are now available for distribution, which distribution may include needy Indians, particularly women and children, who have not been and will not be able to make any considerable use of the articles of surplus clothing which are turned over to us from War Department stocks. The garments available are as follows:

#### 1. UNDERWEAR:

For women and older girls—short sleeves and ankle length. (average wt. 10 lb. per doz.)

-medium weight flat knit bloomers.

For children—long sleeves and ankle length. (average wt. 9 lb. per doz.)

For infants-medium weight ribbed knit shirts.

#### 2. HOSIERY:

For women and older girls—mercerized lisle hose, black, tan, gray.

For boys and girls (4-13)—heavy ribbed, black and dark brown.

For infants—stockings, medium weight, light colors.

#### 3. OUTER GARMENTS:

For boys 6 to 14—knickers of cottonade, covert, cotton tweed and corduroy.

For men and boys—high back bib overalls, denim. For men—denim jumpers.

For children 4 to 6—play suits (coveralls), hickory and denim.

In order that needy Indians may participate in the distribution of these garments it is suggested that you send to the Office at once an estimate of the number of each type of garment that will be needed for issue to needy Indians under your jurisdiction. The procedure to be followed in requesting such garments is the same as that followed in the case of relief flour and, more recently, the cotton goods. Requests will be submitted by the various superintendents to the Washington office, where they will be checked, entered on the proper forms, and sent in turn to the Washington headquarters of the American Red Cross.

Definite instructions are given that the clothing must under no circumstances be sold or distributed in a way that could be so construed. It must not be used in work relief projects, that is, given in return for service rendered.

In requesting garments, be sure to indicate the number of individuals or families who are to benefit in the distribution. Each jurisdiction handling garments will be accountable for the use of the cloth and clothing in accordance with the letter and spirit of the act of Congress, and will likewise be responsible for all charges after delivery to the agency shipping point.

Garments covered by this circular may be issued to mission schools on the same basis as flour and cotton goods, that is, to schools which have taken in additional pupils as a relief measure are entitled to such assistance, and the quantity of garments requested for such schools is to be calculated only upon such additional enrollment, not upon the total enrollment.

/s/ [Illegible] Commissioner.

## UNITED STATES DEPARTMENT OF THE INTERIOR

#### OFFICE OF INDIAN AFFAIRS

#### Washington

F-0

Circular No. 2899

Red Cross Sweaters.

Jan. 3, 1933

To all Superintendents:

Cotton sweaters for men, women and boys and girls, and dark flannel cotton cloth are now available from Red Cross stocks, and your applications for these articles for distribution to needy Indians under your jurisdiction will be considered.

These articles are solely for relief of needy Indians and are not to be requisitioned for use in Government schools, hospitals or other institutions. Mission schools educating Indian pupils may participate in the distribution only to the extent of additional pupils whom they have taken in this year as a relief measure.

Application may be made for 7 dozen sweaters for each 100 families. The break-up of this 7 dozen is approximately as follows:

Boys' and Girls'	(5	to 16	years,	not	inclusive)	24.5%
Women's	(16	year	s up)			37.2%
Men's	(10	6 year	s up)_			38.3%

If, because of special conditions in a given community, a larger per cent of any one or two of the three classifications (boys' and girls', women's, men's), is desired, substitution may be made by increasing one and decreasing the other. The basis for such substitution will be 1½ dozen boys' and girls' sweaters equal one dozen women's sweaters or one dozen men's sweaters. For instance, if there are 500 families to receive sweaters, request could be made for 35 dozen, which under the above percentage would call for 9 dozen boys' and girls', 13

dozen men's and 13 dozen women's sweaters. Should more boys' and girls' and less men's and women's sweat-

ers be desired, a trade could be arranged.

The Red Cross indicates that additional dark flannel is available for distribution as long as the material lasts. Applications for this cloth will not be restricted to 20 yards to a family, but will be shipped in quantities which those making and those granting the requests feel reasonable. This cloth is suitable for the following garments: Dresses for girls and blouses for boys, bloomers and slips for women and girls, pajamas for men and boys, and jackets of the lumber jacket type made with the doubled material nearly to the waist. This flannel is made up in dark check and stripes with at least six patterns and three color combinations for each pattern.

In making requests for these articles be sure to state the total number of families under your jurisdiction and the total number of families which are receiving help from the Government. The Red Cross suggests that maximum applications be held down to 40% of the population with an average of about 20%. These figures are well above allowances ordinarily made Red Cross chap-

ters engaged in outside relief work.

/s/ C. J. Rhoads Commissioner.

# UNITED STATES DEPARTMENT OF THE INTERIOR

# OFFICE OF INDIAN AFFAIRS Washington

Circular No. 2910

Additional Red Cross garments, bedding, blankets, etc.

Feb. 27, 1933

To Superintendents and other Field Officials.

Additional cotton has been turned over to the Red Cross by Congress for manufacture into goods for the relief of needy people. From this lot items will be available as

listed on the attached sheet.

Applications will be approved by this Office and the Red Cross in quantities representing not more than 25% of the requirements of the total number of families under your jurisdiction, with the exception of sheeting, which will be furnished on the basis of six sheets per family for not more than 2% of the total number of families, with the understanding that this item will be furnished only for the sick and aged. See "Standard Assortment for 100 families", as given on the attached sheet.

For instance, a reservation with a total population of 4500 Indians would have approximately 1,000 families. Of these 1,000 families we can help from this latest distribution of Red Cross goods not more than 25% or 250. Please do not ask for more goods than can possibly be

furnished you.

Applications for the items now available should be submitted through this Office at once. In every case be sure to give the total population of your jurisdiction, total number of families and the number of families for which the Red Cross goods are being requested. Do not request any substitutes. Bear in mind (1) that

such Red Cross assistance is intended only for needy people, and (2) that no labor reimbursement can be re-

quired from any Indian recipient.

Since the demand for these goods will probably be considerably in excess of the supply available, we urge that your requests be gotten in to the Office at the earliest possible moment. However, telegraphic or radiographic applications will not be considered.

Sincerely yours,

/s/ C. J. Rhoads Commissioner.

#### EXHIBIT F

# FEDERAL EMERGENCY RELIEF ADMINISTRATION OFFICE OF ADMINISTRATOR Washington

July 17, 1933

#### TO STATE EMERGENCY RELIEF ADMINISTRATORS.

The State Emergency Relief Administrations are authorized to expend funds received under the Federal Emergency Relief Act for Indians—ward as well as nonward. The Office of Indian Affairs will continue to be responsible for the relief of ward Indians in concentrated Indian areas but where the State-wide relief organization covers areas through which Indians are scattered, it is felt that a more economical administration can be secured by including Indians in the general program.

The Commissioner of Indian Affairs has authorized the superintendents and other employees on Indian reservations to assist in State programs when called upon. The superintendents are being requested to keep in touch

with the State administrators.

The Office of Indian Affairs through the Emergency Conservation program and prospective road and other public works appropriations will be able to furnish considerable employment to non-ward, as well as to ward, Indians and State directors should be in contact with reservation superintendents in charge of these programs.

Enclosed is a list of Indian jurisdictions in your State.

Sincerely yours,

/8/ Harry L. Hopkins HARRY L. HOPKINS, Administrator.

#### EXHIBIT G

### UNITED STATES DEPARTMENT OF THE INTERIOR

#### OFFICE OF INDIAN AFFAIRS

Washington

Circular No. 2936 Federal Relief.

Aug. 1, 1933

To Superintendents:

Following a conference with representatives of the Indian Office, Honorable Harry L. Hopkins, Federal Emergency Relief Administrator, sent the following letter to State Emergency Relief Administrators in Indian country:

"The State Emergency Relief Administrations are authorized to expend funds received under the Federal Emergency Relief Act for Indians—ward as well as non-ward. The Office of Indian Affairs will continue to be responsible for the relief of ward Indians in concentrated Indian areas but where the State-wide relief organization covers areas through which Indians are scattered, it is felt that a more economical administration can be secured by including Indians in the general program.

"The Commissioner of Indian Affairs has authorized the superintendents and other employees on Indian reservations to assist in State programs when called upon. The superintendents are being requested to keep in touch with the State administrators.

"The Office of Indian Affairs through the Emergency Conservation program and prospective road and other public works appropriations will be able to furnish considerable employment to non-ward, as well as to ward, Indians and State directors should be in contact with reservation superintendents in charge of these programs.

"Enclosed is a list of Indian jurisdictions in your State."

We feel that it is highly desirable for superintendents to get in touch with the State Emergency Relief Administrators to present the needs of scattered Indians in their territory and to offer assistance and cooperation to the State program. We are entirely in accord with the spirit of Mr. Hopkins' letter and feel that our aim as well as that of the State should be the same, namely, to afford relief in the most satisfactory and economical manner. The Indian service should certainly not be in a position of trying to impose upon the State Relief Administration but solely to work out the best possible program.

It is Mr. Hopkins' desire that the superintendents communicate only with the State Administration—never to him directly. If any problems occur they should be taken up with this Office and not with the Federal Emergency Relief Administration. We feel, however, that you will be able to work out any needed cooperation within the State without any reference to Washington. We would, of course, wish to be informed of co-

operative programs which are worked out.

(See Circular Letter of January 17, 1933, "State Aid—R. F. C. Funds".)

/s/ John Collier Commissioner. F-O EJA

# UNITED STATES DEPARTMENT OF THE INTERIOR

OFFICE OF INDIAN AFFAIRS

Washington

Circular No.

Participation of Indians in distribution of relief hogs.

Aug. 29, 1933

To all Superintendents:

There is a possibility of Indians, both ward and nonward, being permitted to participate in the distribution of relief hogs now being arranged by the Federal Emergency Relief Administration. Distribution of course will

be in the form of meat rather than livestock.

The original allocation of this form of relief will be made by the Federal Relief Administrator to the Emergency Relief Administrators of the several states on the basis of the number of families being assisted by such states. Instructions have been sent out by the Washington relief headquarters indicating the eligibility of Indians to participate in this distribution. If you desire any of this meat for needy Indian families under your jurisdiction, you should immediately get in touch with your State Emergency Relief Administrator, making application for this form of help for the number of families under your jurisdiction now in need of assistance. You should advise the state administrator of the number of ward Indians who are now being furnished relief by you or who are in immediate need of assistance.

/8/ John Collier Commissioner.

Not sent; by direction of Mr. Armstrong. October 26, 1933.

#### EXHIBIT H

# UNITED STATES DEPARTMENT OF THE INTERIOR

OFFICE OF THE SECRETARY Washington 25, D. C.

[Dept. Emblem]

Dear Mr. Aspinall:

Your Committee has requested a report on H. R. 9621, a bill "To provide (1) that the United States shall pay the actual cost of certain services contracted for Indians in the States of Minnesota, North Dakota, South Dakota, and Wisconsin; and (2) for a more equitable apportionment between such States and the Federal Government of the cost of providing aid and assistance under the Social Security Act to Indians."

We recommend that the bill not be enacted.

The purpose of the bill is to require the Federal Government to assume full responsibility for providing education, medical assistance, agricultural assistance, and welfare assistance for all Indians, as defined very broadly in the bill, living on or off reservations in the States of Minnesota, North Dakota, South Dakota, and Wisconsin. The definition is very broad and includes all persons whom the community chooses to regard as Indian. Whenever by contract a State agrees to provide the abovementioned services, the contract must provide for the Federal Government to pay the actual costs involved, including administrative costs. The implication appears clear that in the absence of such contract the State has no responsibility for providing these services.

We believe that it is grossly discriminating to set aside a group on the basis of ethnic origin and provide that a

BUREAU OF INDIAN AFFAIRS

State or local government does not have the same responsibilities toward the members of the group as it acknowledges toward other persons in similar circumstances. The bill would have the effect of setting Indian citizens, wherever they might live, apart from other citizens, with a different relationship to their State and local governments even though they may have been born or may have lived for many years in an off-reservation community.

Communities which have been providing services to Indians and non-Indians alike, without question, might begin to distinguish between them, not necessarily with any thought of discrimination, but in order to secure Federal assistance with respect to Indians.

It has been the position of this Department for many years that insofar as possible State and local governments should have the same responsibility for providing assistance and services to their Indian residents as for non-Indians in similar circumstances. It is recognized that the tax-exempt status of Indian lands has an impact upon the financial ability of the local or State government to provide such assistance and services. Therefore, the Federal Government has recognized certain responsibilities for Indians living on reservations or other tax-exempt Indian lands. It should be noted that even Indians on reservations are not now regarded as an exclusive Federal responsibility because many of them share equally with other citizens in various State services.

The education, welfare, and agricultural programs for Indians have for years been prepared in terms of Indians who live on reservations or other Indian-owned tax-exempt land. Appropriations estimates have been prepared on that basis, and appropriations by Congress have been made on that promise. If the Federal Government were now to assume financial responsibility for services in these fields to Indians as defined in the bill, wherever they may live within a State, greatly increased appropriations would be required. The bill is applicable only to the four States named, but we believe that there is

no sound basis for establishing for those four States policies which are different from the policies applicable to other States with considerable Indian populations. If the bill were enacted, it would require greatly increased annual appropriations for Indian education, health, welfare, and agricultural programs and a substantial increase in administrative personnel. We are not in a position at this time to estimate the total amount of the additional cost involved.

The definition of an Indian in section 2 would also create insurmountable problems in determining membership. The Federal courts and this Department have recognized that the tribes have the primary responsibility for determining their own membership, except where otherwise provided by law or by Departmental regulations. The bill fails to take into consideration either the rights of the tribe or the wishes or desires of those individual Indians who, by their own action or motion, have severed reservation ties and have moved and established themselves elsewhere. Apparently, under the provisions of the bill a community may determine the racial status of an Indian without regard to whether such individual meets any of the requirements of the tribes or the Federal Government. Because of the increasing numbers of those who have left the reservations and established themselves elsewhere, the numbers of people with some degree of Indian blood, and the increasing diminution of degree of Indian blood, the bill would soon encompass many who would otherwise not be classified as Indians, in many respects against their choice, and in other respects against the laws or wishes of the tribes.

The records of this Department contain the names of many persons who have never been identified as Indians who are eligible for Federal services, but who would be designated as Indians under the bill. For example, a roll for the distribution of a judgment of the Court of Claims or the Indian Claims Commission contains the names of persons who are listed, not as Indians, but merely as descendants of persons who were members of an Indian tribe 100 years ago. The tribe has long since

ceased to exist, and the descendants of the tribal members have not been associated with or identified as Indians for nearly as long. They would, however, be designated as Indians for the purpose of the bill. Another example is the census records of Indian tribes which contain the names of many persons who are not tribal members but appear on the list because it is a census rather than a membership roll. Many of such persons are not even citizens of the United States but are in fact Indian nationals of Canada residing in the United States on the basis of a treaty of law affording freedom of entry into the United States. Under the bill those persons would be designated as Indians entitled to special Federal services.

With respect to section 3 of the bill, this Department is not responsible for administering the programs of old age assistance, aid to dependent children, aid to the blind, and aid to the permanently and totally disabled, under the Social Security Act. We shall therefore defer to the views of the Department of Health. Education and Welfare on this section of the bill. Although the section is patterned after a similar statutory provision that is applicable to the States of Arizona, New Mexico, and Utah with respect to payments in the first three categories named above to Navajo and Hopi Indians living on their reservations, we believe that legislation of this type is undesirable. The policy of this Department is to bring about equal and full recognition of the Indians as citizens of the States in which they reside with all the rights and privileges of other citizens and with the same responsibilities and duties. We are therefore not in favor of legislation which sets the Indian apart from other citizens in a State-wide assistance program and establishes a special Federal responsibility.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours, Secretary of the Interior

Hon. Wayne N. Aspinall Chairman, Committee on Interior and Insular Affairs House of Representatives Washington 25, D. C.

#### EXHIBIT I, PORTIONS OF SUNDRY HEARINGS BEFORE CONGRESS, OMITTED

# CIVIL DOCKET UNITED STATES DISTRICT COURT

Civ-2408 Tuc.

Jury demand date:

RAMON RUIZ and ANITA RUIZ, for themselves and all others similarly situated, PLAINTIFFS

278.

STEWART L. UDALL, Secretary of the Interior, DEFENDANT

For plaintiff:

ROGER C. WOLF, ESQ. Retired—2/18/70 Papago Legal Services Program Box 246 Sells, Arizona 85634

Mail notices to

WINTON D. WOODS College of Law University of Arizona Tucson, Arizona 85721

#### For defendant:

EDWARD E. DAVIS
U. S. Attorney
RICHARD S. ALLEMANN
Asst. U. S. Atty.
5000 Federal Building
Phoenix, Arizona 85025

STATISTICAL RECORD	COSTS	
J.S. 5 mailed Mar. 5, 1968	Clerk	
J.S. 6 mailed	Marshall	
Basis of Action: U. S. a party Complain in Mandamus, for	Docket fee	
Judicial Review and for De- claratory Judgment regarding assistance to Indians	Witness fees	
Action arose at: Ajo, Pima, Ariz living off Indian Reser-	Depositions	

# DOCKET ENTRIES

DATE	PROCEEDINGS
1968	
Feb. 19	<ol> <li>File Application for Leave to Proceed in Form Pauperis, Memo. of Points and Auths. and Affidavit in Support of Application.</li> </ol>
Feb. 19	<ul> <li>MINUTE ENTRY: Order grant plaintiffs leave to file complaint herein without prepay- ment of filing fee.</li> </ul>
Feb. 19	2. File Complaint.
Feb. 19	- Issue Summons.
Apr. 5	<ol> <li>File Summons returned by Marshall showing service on Stewart L. Udall by agent person- ally at Interior Dept., Washington, D. C. on March 28, 1968, at 3:00 p.m.</li> </ol>
Apr. 19	<ol> <li>Docket Stipulation that the defendant may have to and including 5/20/68 within which to answer or plead, filed at Phoenix or 4/17/68.</li> </ol>
May 21	— Mail certified copy of Minute Entry of February 19, 1968 to counsel for Plaintiffs and de liver copy to Marshal.
May 23	<ol> <li>Docket Stipulation giving Defendant to and including June 3, 1968 within which to answer plead or otherwise appear, filed at Phoenix May 21, 1968.</li> </ol>
June 11	<ol><li>Docket Answer filed in Phoenix on June 7 1968.</li></ol>
June 27	— MINUTE ENTRY: On motion of counsel for plaintiffs, leave is granted to plaintiffs to com- mence and prosecute this action without pre- payment of fees and costs.
June 27	- Mail notice of minute entry to counsel.

DATE	**	PROCEEDINGS
1968		
Sep. 17	-	MINUTE ENTRY: It is ordered that this case is set for pretrial hearing on Monday, December 2, 1968, at the hour of 3 o'clock p.m.
Sep. 17	-	MINUTE ENTRY: It is ordered that this case is set for trial to the court on Thursday, December 12, 1968, at the hour of 9:30 o'clock a.m.
Sep. 20	-	Mail notice to counsel of pretrial and trial settings.
Nov. 1	7.	Enter and file Order Regarding Pretrial.
Nov. 1	-	Copies of order regarding pretrial mailed to all counsel from Judge's Office.
Nov. 27	-	MINUTE ENTRY: The Court being advised that this case will likely be disposed of upon cross-motions for summary judgment, it is ordered that the trial setting for December 12, 1968, is vacated; and the Court will set the motions for summary judgment for hearing when filed.
Nov. 28	-	Copies of minute entry of 11/27/68 mailed to counsel for plaintiffs and to U. S. Attorney at Phoenix and Tucson.
Nov. 29	8.	Docket Defendant's Motion for Summary Judgment, filed at Phoenix 11/27/68.
Dec. 2	9.	Docket Agreed Statement of Facts, filed at Phoenix 11/29/68.
Dec. 9	10.	Docket Plaintiffs' Motion for Enlargement of Time, filed 12/6/68.
Dec. 9	-	Mail notice of hearing plaintiffs' motion for enlargement of time on Monday, Dec. 23, 1968, at 2:30 a.m., to counsel.

DATE		PROCEEDINGS
1968		
Dec. 23	-	MINUTE ENTRY: Plaintiffs' Motion for Enlargement of Time for hearing. No appearance by or on behalf of either party. It is ordered that the time within which defendant may respond to motion for summary judgment is extended until 30 days following Supreme Court decision.
1969		ing Supreme Court decision.
June 5	11.	File Plaintiffs' Response to Defendant's Mo- tion for Summary Judgment, and Affidavit.
June 5	12.	File Plaintiffs' Memorandum in Support of Cross-Motion for Summary Judgment.
June 18	13.	File Notice of Hearing plaintiffs' Cross Motion for Summary Judgment on Monday, June 30, 1969, at 2:00 p.m.
June 30	-	MINUTE ENTRY: Plaintiffs' Cross Motion for Summary Judgment on for hearing. Roger C. Wolf, Esq., appears for pltfs. Richard S. Allemann, Ass't. U. S. Atty., appears for Govt. Hearing is had. Order deny motion of the several parties for summary judgment.
Oct. 3	14.	File Plaintiffs' Motion for Summary Judgment.
Oct. 3	15.	File Notice of Hearing Motion for Summary Judgment on October 20, 1969, at 2:00 p.m.
Oct. 18	16.	File Stipulation and enter order continuing hearing on motions for summary judgment to November 3, 1969, at 2:00 p.m.
Oct. 15	17.	File Defendant's Second Memorandum in Support of Motion for Summary Judgment Docketed at Tucson 10/20/69.

DATE		PROCEEDINGS
1969		a line
Nov. 3	-	MINUTE ENTRY: Plaintiffs' Motion for Summary Judgment and Defendant's Motion for Summary Judgment for hearing. Roger C. Wolf, Esq. and Winton B. Woods, Esq., ap- pear on behalf of the plaintiffs. Richard S.
	4	Allemann, Ass't. U. S. Atty., is present on behalf of the defendant. Hearing is had. It
		is ordered that defendant's motion for summary judgment is granted. It is ordered that plaintiffs' motion for summary judgment is denied. The Clerk is directed to enter judgment that the plaintiffs take nothing by their complaint and the action be dismissed.
Nov. 4	18.	Enter and file Judgment that the plaintiffs, Ramon Ruiz and Anita Ruiz, take nothing by their complaint and that the same is dismissed.
Nov. 4	-	Mail copies of Judgment and Minute Entry of 11/3/69 to counsel.
Dec. 17	19.	File plaintiffs' Notice of Appeal.
Dec. 17	-	Mail copy of Notice of Appeal to U. S. Attorney, Phoenix.
1970		
Jan. 23	-	MINUTE ENTRY: It is ordered that the time within which to file and docket the record on appeal herein is extended to and including March 13, 1970.
Jan. 26	-	Mail copy of extension of time for filing record on appeal to Roger C. Wolf, and Richard S. Allemann.
Mar. 13	-	Transmit Record on Appeal to Clerk, U. S. Court of Appeals for the Ninth Circuit.

DATE PROCEEDINGS

1970

Mar. 13 — Mail copies of Clerk's Certificate and Index to Record on Appeal to Roger C. Wolf, Winton D. Woods and Richard S. Allemann.

Mar. 13 — Enter in Judgment Docket the costs incurred in preparation of Record on Appeal.

#### IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

#### No. 25568

RAMON RUIZ AND ANITA RUIZ, for themselves and all others similarly situated, APPELLANTS

v.

ROGERS C. B. MORTON, Secretary of the Interior,
APPELLEE

APPELLANTS' MEMORANDUM IN RESPONSE TO THE COURT'S ORDER OF JANUARY 3, 1972

The purpose of this submission is to supply additional legislative history on the issue of the responsibility of the Bureau of Indian Affairs under the Snyder Act for off reservation Indians. There appear to be three questions in this area. First, did the Snyder Act create such a responsibility. Second, did the Social Security remove it if it did exist. And third, if it did exist and was not removed by the Social Security Act, has it been limited by a policy of the Bureau which has been communicated to and approved by Congress.

On the first question we cannot disagree with the government's analysis that the Snyder Act was not intended to create new obligations. This, however, does not even begin to answer the question. The government's reference to the use of undefined terms such as "jurisdiction" in internal Bureau documents does not help either. Rather than here restate our earlier arguments on the clear language of the statute we will rely on the House Report on the Johnson-O'Malley Act of 1934 set out at page 89-90 of the appendix. This report clearly recognizes the Bureau's ". . . responsibilities for the welfare of the Indians . . ." in areas where ". . . Indian tribal life is largely broken up and in which the Indians are to a considerable extent mixed with the general population."

On the second question we can only say that it is apparent that the Social Security Act and it is altogether silent on this question, and that even if it were otherwise it provides only for categorical assistance programs which are not at issue here.

As to the third question we strongly maintain that a self-imposed limitation such as is argued for here, not being authorized by statute, is not within the power of the Bureau in the first instance. That issue aside, however, we believe that an analysis of the statutory history supplied by the government and our own modest additions thereto cannot fairly be said to show any understanding by Congress of the nature and extent of the argued for limitation, let alone any approval thereof. The records of the last 20 years reveal 23 references in addition to those cited by the government. These are included in the appendix and include last years hearings which contain the most thorough discussions of the problem that the appropriations committees have ever engaged in. In the discussion that follows emphasis will be laid on the actual discussions wherever possible since they shed greater light on the problem than a few references to the word "reservation" in the written reports and prepared statements. The very confusion and inconsistencies that we are trying to point out make it virtually impossible to organize this material in anything but a chronological order so this is the method we have chosen to use.

The first reference of note is contained in the government's submission and is to the 1942 hearings. The subject under discussion at that time was aid to Indians in or near urban communities, especially in the state of Nevada. At that time Bureau officials specifically told Congress that the only reason that these people were not being served was the existence in the act of the restrictive word "rural". It was said that the removal of that word would allow service to urban Indians. No mention of reservations is made and the word "rural" was subsequently removed from the act and does not appear in the statute dealt with here.

On page one of our appendix is the testimony of Mr. Meyer a Bureau official. Senator Young directly asked him in 1952 whether an Indian off the reservation was eligible for relief and he did not answer. That same year in answer to questioning from Congressman Norrell, Mr. Meyer stated for the record that there were 427,000 Indians in the United States. This figure is roughly that of the 1950 census and reflects the entire Indian population of the country. Since Mr. Meyer was using this figure (appendix pp. 2) as justification for the large number of Bureau employees it is reasonable to suppose that he was claiming responsibility for them.

The next year the 82nd Congress heard testimony (pp. 3-5) on the situation of the 35,000 Indians in Eastern Oklahoma whom the Bureau serves. They are contrasted to those of Western Oklahoma who "still own a great deal of trust land." The justification for the inclusion of the eastern group is their isolation and poverty. Again the national total is listed at about 437,000 (page 4).

Two years later the Senate was told that the estimate was down to 400,000 and that 3/4 of them lived on or near reservations (page 6). The reasons for the drop or the significance of the fraction are not made clear but the implication would seem to be that the relocation program then under discussion was available at least to 300,000 Indians living on or near a reservation.

Two years later the figure was still at 400,000 "on reservations and in different places" to support a requested increase for law enforcement personnel (page 8).

The next year the figure went back up to 450,000, "Under the jurisdiction of the Bureau of Indian Affairs," again for the purpose of defending staff and increases from an assault by Senator Dworshak from Idaho, and it remained at that level in the next year (pages 9, 10).

In 1959 (pages 11-12) the Senate had the benefit of the testimony of Emmons, Greewood, and Gifford which has already been quoted to this court in briefs of counsel. There is in fact in their testimony a statement that the Bureau assists only those on reservations. They say that they do this because otherwise Indians could not establish residence of the reservation. The fallacy of this argument has been clearly established by the courts. They say also that the states supply benefits which are not re-

flected by the admitted facts in this case. They also say that they don't do it because the Indians might leave the reservations, a reason which is hardly consistent with Congressional intent. They do, however, seem to

state the argued for position.

However, the next year in response to probing by Senator Mundt, Commissioner Emmons stated that the Bureau could provide services to voluntarily relocated Indian in communities like Rapid City, and we also have a distinction drawn between cities near reservations, such as Rapid City, and those far away, such as Boston (pages 14-15) and this statement is repeated to the same

Senator the next year (pages 16-17).

More importantly that same year the House Committee was told that the Bureau was planning direct subsidies to Indians who would move off the reservations like Turtle Mountain where economic development was unlikely. This plan is directly contrary to any supposed reservation boundry limit (pages 18-19). There is also a report citing 520,000 Indians, 360,000 of whom live on or near reservations. Again, the significance of these figures is not clear but they are being used to justify program increases. Having announced this program for subsidizing off reservation Indians Mr. Emmons turned around and said that Bureau responsibility existed when "Generally the Indians are living on trust lands, either allotted or tribal lands." And Miss Gifford reitterated that "We do expect the county offices to take care of those Indians who do not live on the reservation." Since the Turtle Mountain people were to be moved off of their trust lands and into counties these statements are completely contradictory.

The next year before the Senate committee, Commissioner Crow stated that services were in general limited to Indians residing on trust property. The distinction, however, is a difficult one as those Indians are contrasted with those who have "established themselves in the general society" or "established themselves in the normal communities." This distinction appears to incorporate some concept of acculturation and it is unclear where the separate Indian community not on trust property

would fit in (pages 24-25 and 27). That same year the Senate was also told that leaving the reservation would mean the forfeiture of schooling and hospitalization benefits (page 26). As has been stated before and will appear later, this statement was not even accurate in that health benefits are in fact available to on-reservation Indians as well as certain educational grants. The House was also told, again by Miss Gifford, that the Bureau considered the 375,000 Indians living on reservations their direct responsibility.

The next Session, however, the House heard the figure of 380,000 for those living "on or near" reservations as being eligible for services. Mr. Nash was asked directly who the Indian Service considered to be an Indian, but, unfortunately, was not given a chance to answer.

The 88th Congress 2nd Session Senate Committee again was told that 380,000 Indians on or near reservations were included as opposed to those living in Los Angeles, San Francisco, Chicago, Denver and Minneapolis. Here again we have a dichotomy set up that does not begin to tell us which group appellant's herein belong to. We do, however, find a guide at the top of page 33. Eligible Indians ". . . reside on trust land or so close to it that the program of the reservation would be affected . . ." This is the beginning of a policy which comes out much more clearly a little later on. There are no further comments at this point so it is impossible to judge what is close and what would be an affect but this is hardly consistent with the absolute distinction of the regulations here in question. Interestingly enough the House committee of the same session was told that the Bureau expects the states to meet 100% of the need of the offreservation groups (page 34). This distinction is somewhat garbled by confusion with the categorical programs. It is further confused by the Bureau's statement that Rapid City is now considered "near" a reservation and residents thereof are eligible for the various relocation services (page 35). It appears that Senator Mundt (ante) has had an effect on the Bureau, and they have "relaxed (their) rules for entitlement to the service" (page 37). The House is now told that the most successful Bureau programs ". . . solve the problems of those who leave the reservation," and that "Close by the reservations we also have all kinds of responsibilities. We have Oklahoma, Alaska, and other places that do not have reservations" (page 39). Again we have the contrast with distant cities such as Los Angeles, San Francisco, Denver, and Chicago where the Bureau does not have responsibility. Here again is the idea of closeness to the reservation where "the way in which they live effects reservation programs" because "they move back and forth, etc." The court is referred to the Stucki affidavit on page 79 of the transcript herein for an analysis of the way in which Appellants live, their ties to the reservation and their back and forth movements.

The first session of the 89th Congress was told by retiring Commissioner Nash that the Bureau "provides essential services where local governments do not provide them," "fill(s) in with Bureau services where local or tribal government is usable to meet essential needs," and wants more funds to provide increased general assistance funds to provide "increased general assistance and child welfare caseloads, notably in Indian communities located in economically depressed areas." No reservation limitation is expressed, in fact "The Bureau also recognized that some Indians, like some non-Indians wish to work close to home, while others are attracted by the greater opportunities of city life. Our programs, therefore, are designed to help the individual seek and find his opportunity wherever it may be" (Pages 42-43). Further on Commissioner Nash goes in some detail into the eligibility criteria for the Indian schools, these criteria do not include living on a reservation but are based on cultural and language problems as well as isolation (pages 44-45).

In the same report Senator Bible questioned Dr. Wagner concerning Public Health Service activities in Nevada. These activities are covered by the same enabling legislation at issue here. Dr. Wagner stated that trust land was not the sole criteria for eligibility, that except in the large urban communities a culturally identifiable Indian community was eligible for their housing and

other programs (pages 46-48) and that these programs were carried out in conjunction with the Bureau of Indian Affairs.

The 89th Congress 2nd Session Senate Committee heard the results of an investigation it had ordered the previous year (pages 40-41) into the needs of the off reservation Indians. This report is quite thorough and is set out in its entirety at pages 49-57 of the appendix. The recommendations include the establishment of Public Health Service facilities in Rapid City, and much more Bureau involvement in that and similar areas. It is stated that although the Bureau is reluctant to open up a full scale general assistance program there it will move in if a small additional imput will improve the situation. The Bureau also indicated (pages 55-56) that it was then providing full welfare benefits for relocated Indians in California until they could meet the 3 year residency requirement which was then in force. They did state that this benefit was not available to those who had moved to California on their own but did not attempt to justify this distinction other than by saying that if they did give assistance to self-relocated Indians they could not ever establish residence. This distinction is completely illogical since ability to establish residence in California would not depend on who had purchased the bus ticket, and there appears no other support for the distinction. However there is no question that Congress was then aware that the Bureau was in fact providing general assistance benefits to some off-reservation groups and was recommending to its staff that these benefits as well as others be made available, at least in a limited way to other off-reservation groups. This would open up the question as to whether the distinction between those groups and Appellants herein is legally supportable.

The responsibility for near reservation Indian communities continues to be expressed in the reports thereafter. The effect of this can be seen in the question put to Commissioner Nash by Senator Bible at page 65. He wanted to know the numbers of reservation Indians in Nevada under the jurisdiction of the Bureau and also the number of non-reservation Indians "you have." This

would imply some idea on the Senator's part that the Bureau had responsibility for non-reservation Indians, at least in Nevada, a not unreasonable conclusion in view of the Senator's conversation with Dr. Wagner (ante) two years before. At the same time Dr. Rabeau repeated his predecessor's ideas of service to off-reservation Indians (pages 66, 73-74).

The next year the Bureau again repeated to the Senate its on or near policy when Commissioner Bennett made the statement contained in our reply brief (pages 67-68), and announced the opening of five metropolitan service offices (page 69) and his assistant Mr. Cormock announced yet another direct subsidy program for offreservation Indians (page 70). Mr. Bennett further stated that he thought no additional legislation was needed to authorize these programs (pages 71-72).

We have also included excerpts from reports which although they follow by some 2 to 4 years the events here in issue shed considerable light on the question at

hand.

In the first session of the 92nd Congress Senator Bible qualifies." The response of the Bureau is at best garbled. once again attacked the question of Bureau jurisdiction, stating (page 75) "I have never been quite sure who They mention for the first time a blood quantum requirement and restate the on or near requirement. When the Senator asked for a definition of near, the only response was not Manhattan. Mr. Stevens (page 76) responded that the Bureau provided benefits not otherwise available to those living near reservations and stated that otherwise services are confined "as much as possible" to Indians living on trust land. Later the Bureau supplied the Senator with a detailed list which includes:

"32,600 Indians reside nearby, who may receive services because of their proximity and mobility. For example, Indians working in nearby towns frequently maintain close contact with reservation people and affairs; they may visit the reservation or return temporarily or

permanently" (page 76).

The report goes on: "Every Indian in the service area may not be receiving BIA services. He may not apply for them, or he may not meet conditions for certain services. For example, adult vocational training is limited to persons with one-fourth or more Indian blood, land services benefit owners and operators of trust land, and BIA welfare services are supplemented to local provisions of welfare." (emphasis added; page 77). Since Appellants are just such nearby residents seeking just such a supplement this report is tantamount to a statement to the Committee by the Bureau that Appellants

herein are in fact being served.

At the same time the committee was told that the Bureau was building houses for small bands of Indians with land ownership problems or without land (page 78). The House hearings of that year present the clearest statement ever made on the question at hand. It begins with the announcement of the long awaited opening of the Phoenix Indian Medical Center that "will serve some 55.000 Indians living in and around Phoenix and in reservation communities in Arizona, California, Nevada and Utah" (emphasis added; page 80). Then follows the testimony of Congressman Fraser of Minnesota concerning his efforts to assist off-reservation Indians (pages 82-85). His experience closely parallels the development of the arguments in this case. He says that the Bureau initially told him that they were limited by Congress to serving Indians on trust land but backed off from that position when they could find no statutory report. He states, "Assistant Secretary Loesh finally admitted last year that the hands off policy regarding urban Indians was based on informal understandings with the congressional appropriations committees. The only documentation he can provide, however is some ambiguous language in a 1951 Senate appropriations report referring to the Johnson-O'Malley program. I have finally come to realize that the Bureau's approach to urban Indians is based on certain policy assumptions that have not been articulated" (page 82).

Mrs. Hansen, the Committee Chairman then stated with regard to the statement of Mr. Loesch, "This is not true. Assistant Secretary Loesch has never reached any understanding in that connection with this com-

mittee. This was the first year that we discussed the problem in detail with the BIA" (page 84). She also stated that the only reason the Bureau was reluctant to assist urban Indians was that they were afraid of interfering with their entitlement to local services. She later again stated, "Our appropriation bill has never carried a limitation on expenditures concerning Indians (page 85).

Later, Mr. Bruce again gave the definition of eligible Indians in substantially the same language as he had given to Senator Bible, and admitted that the term

"near" had never been defined (pages 86-88).

In conclusion, the material presented at best indicates an attempt to exclude Indians living in urban centers such as Los Angeles, San Francisco, Denver, Chicago and Minneapolis and even this exclusion has been expressly denied by the Chairman of the House Committee on Appropriations for the Department of Interior and Related Agencies, and there exists no other basis for it. Submitted this 17th day of February, 1972.

> /s/ Lindsay Brew LINDSAY BREW for himself and WINTON D. WOODS, JR. Attorneys for Appellants

A copy of the foregoing was served upon Carl Strass, attorney for Appellee by placing same in the United States mail with proper postage and addressed to him at the Department of Justice, Washington, D.C. 20530. Dated this 17th day of February, 1972,

/s/ Lindsay Brew

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# SUPREME COURT OF THE UNITED STATES

No. 72-1052

ROGERS C. B. MORTON, Secretary of the Interior, PETITIONER

v.

RAMON RUIZ, et ux.

ORDER ALLOWING CERTIORARI—Filed April 28, 1973

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

## No. 72-1052

# In the Supreme Court of the United States

OCTOBER TERM, 1973

ROGERS C. B. MORTON, SECRETARY OF THE INTERIOR, PETITIONER

W.

RAMON RUIS AND ANITA RUIZ

ON WRIT OF CENTIONARI TO THE UNITED STATES COURT OF APPRAIS FOR THE SINTH CIROUT

## BRIEF FOR THE SECRETARY OF THE INTERIOR

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# In the Supreme Court of the United States

OCTOBER TERM, 1973

Whether the Secretained the latered is remared

#### No. 72-1052

ROGERS C. B. MORTON, SECRETARY OF THE INTERIOR,
PETITIONER

v.

# RAMON RUIZ AND ANITA RUIZ

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

#### BRIEF FOR THE SECRETARY OF THE INTERIOR

#### OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 462 F. 2d 818. The district court did not write an opinion.

#### JURISDICTION ....

The judgment of the court of appeals was entered on May 31, 1972 (Pet. App. B). A timely petition for rehearing with suggestion of rehearing en banc was denied on August 31, 1972 (Pet. App. C). On November 20, 1972, Mr. Justice Douglas extended the time for the Secretary of the Interior to file a petition for a writ of certiorari to and including January 15, 1973,

and on January 8, 1973, further extended the time to and including January 28, 1973. The petition was filed on January 29, 1973, and was granted on April 23, 1973. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

#### QUESTION PRESENTED

Whether the Secretary of the Interior is required to provide general assistance benefits to Indians throughout the United States, contrary to the Secretary's established policy (on which Congress has based appropriations of funds) limiting such benefits to Indians and Indian families living on reservations in the United States or living in jurisdictions regulated by the Bureau of Indian Affairs in Alaska and Oklahoma.

#### STATUTES AND REGULATIONS INVOLVED

The Snyder Act, 42 Stat. 208, 25 U.S.C. 13, provides:

The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for the following purposes:

General support and civilization, including education.

For relief of distress and conservation of health.

For industrial assistance and advancement and general administration of Indian property.

<sup>1</sup> January 28, 1973, was a Sunday.

For extension, improvement, operation and maintenance of existing Indian irrigation systems and for development of water supplies.

For the enlargement, extension, improvement and repair of the buildings and grounds of existing plants and projects.

For the employment of inspectors, supervisors, superintendents, clerks, field matrons, farmers, physicians, Indian police, Indian judges, and other employees.

For the suppression of traffic in intoxicating liquor and deleterious drugs.

For the purchase of horse-drawn and motor-propelled passenger-carrying vehicles for official use.

And for general and incidental expenses in connection with the administration of Indian affairs.

The Department of the Interior and Related Agencies Appropriations Act, 1968, Public Law 90–28, 81 Stat. 59, 60, provides in pertinent part:

#### BUREAU OF INDIAN AFFAIRS

#### EDUCATION AND WELFARE SERVICES

For expenses necessary to provide education and welfare services for Indians, either directly or in cooperation with States and other organizations, including payment (in advance or from date of admission), of care, tuition, assistance, and other expenses of Indians in boarding homes, institutions, or schools; grants and other assistance to needy Indians; maintenance of law and order, and payment of rewards for information or evidence concerning violations of law on Indian reservations or lands; and operation of Indian arts and crafts shops; \$126,478,000.

Section 17 of the Act of June 30, 1834, 4 Stat. 738, 25 U.S.C. 9, provides in pertinent part:

The President may prescribe such regulations as he may think fit for carrying into effect the various provisions of any act relating to Indian affairs \* \* \*

66 Indian Affairs Manual provides in pertinent part:

## 3.1 General Assistance.

1. Purpose. The purpose of the general assistance program is to provide necessary financial assistance to needy Indian families and persons living on reservations under the jurisdiction of this Bureau and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma.

# .1nl2 18 ,6S-00 was beliefe T Sout stat. Inaltarian part. 4 Eligibility Conditions.

A. Residence. Eligibility for general assistance is limited to Indians living on reservations and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma.

# For expenses TRANSTATE of the concertion

The facts in this case were stipulated. Essentially, in 1940 respondents, who are Papago Indians and husband and wife, left the Papago Reservation and moved 15 miles away to Ajo, Arizona, a town populated principally by Papago employees of a copper

<sup>&</sup>lt;sup>2</sup> The facts are accurately stated in the opinion below (Pet. App. A). The Agreed Statement of Facts is reproduced at App. 45-48.

mining company. In July 1967, some 27 years after they moved to Ajo, the mine in which Mr. Ruiz worked was closed by a strike. It remained closed until March 1968. During the strike Mr. Ruiz applied for Arizona welfare benefits, but as a striker he was found ineligible. Respondents then sought federal Indian general assistance benefits. After a hearing their claim was denied because neither of them lived on a reservation and they were thus ineligible for such benefits under the criteria specified by the Secretary of the Interior in the relevant provisions of the Department's Indian Affairs Manual (supra, p. 4).

The respondents then brought this suit challenging the eligibility requirements. The district court, without opinion, granted summary judgment for the Secretary. Respondents appealed, urging that the Secretary's restrictions on general assistance eligibility are invalid on both statutory and constitutional grounds. The court of appeals reversed, with one judge dissenting. Basing its decision on the Snyder Act, 42 Stat. 208, 25 U.S.C. 13, pp. 2-3, supra, it held "that the Bureau has imposed unauthorized residency restrictions upon the availability of general assistance benefits, in excess of its authority and in contravention of Congressional intent" (Pet. App. 29). The dissenting judge was of the view that the Snyder Act gives broad authority to the Secretary of the Interior and "does not preclude (indeed it seems to require) reasomable Bureau decisions as to how its limited funds may best be allocated and the drawing of reasonable classifications \* \* \* ." Pet. App. 31.

#### SUMMARY OF ABGUMENT

- 1. The Snyder Act authorizes the Bureau of Indian Affairs to provide a general assistance program for Indians, but it leaves the details of the program to the Secretary of the Interior and to the congressional appropriation process. This is shown by both the language of the Act and its legislative history. The court of appeals has, therefore, misconstrued the Act in holding that it deprives the Secretary of the Interior of the authority to limit supplemental welfare benefits under the Act to Indians fiving on reservations or in areas subject to the jurisdiction of the Bureau of Indian Affairs in Alaska and Oklahoma.
- 2. Congress has not appropriated funds for general assistance to off-reservation Indians living in States other than Oklahoma and Alaska. The Appropriation Act for fiscal year 1968, the year at issue here, does not explicitly define the scope of the general assistance program. But the requests made to Congress by the Department of the Interior for fiscal year 1968 and, indeed, for all recent years have been for general assistance to needy Indians on reservations (and in the specified areas of Alaska and Oklahoma). Congress in 1968 granted less money for the general assistance program than the sum requested by the Department of the Interior for this purpose. Manifestly, therefore, Congress had no intention of substantially increasing the scope of existing and proposed services.
- 3. While in some instances Congress has legislated in detail as to Indian matters, Congress has given the Secretary of the Interior broad discretion in the

management of Indian welfare services. The Secretary's limitations on eligibility for general assistance benefits are a proper exercise of his authority and are constitutional. The distinctions are based on the degree of federal and tribal responsibility for the people in question and are traditional distinctions which this Court has upheld in other contexts as a reasonable basis for differentiating in governmental treatment of Indians. This Court has also recognized the inherent difficulties of dividing limited funds among competing classes of welfare claimants and the impropriety of judicial displacement of the reasonably exercised judgments of the political authorities required to make such determinations.

#### ARGUMENT

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THE SNYDER ACT AUTHORIZES THE BUREAU OF INDIAN AFFAIRS TO PROVIDE A GENERAL ASSISTANCE PROGRAM FOR INDIANS BUT LEAVES THE DETAILS OF THE PROGRAM (INCLUDING THE ESTABLISHMENT OF ELIGIBILITY STANDARDS) TO THE SECRETARY OF THE INTERIOR AND TO SUBSEQUENT CONGRESSIONAL APPROPRIATIONS

Since 1924 (Act of June 2, 1924, 43 Stat. 253, as amended, 8 U.S.C. 1401), all Indians who were born in the United States have been recognized as American citizens and consequently as citizens of the State in which they reside. Accordingly, all Indians, whether residing on or off a reservation, are entitled to social security and state welfare benefits equally with

all other citizens of the State. The benefits at issue in this case are welfare payments provided by the United States to Indians when state benefits are not available. The policy of the Department of the Interior has been to reserve the limited funds available for such benefits for Indians living on reservations or in areas under Bureau of Indian Affairs jurisdiction in Oklahoma and Alaska. The court of appeals held this policy to be in violation of the Snyder Act (supra, pp. 2-3) and concluded that welfare benefits under the Act must be made available to Indians wherever located in the United States (see Pet. App. 21). This interpretation of the Snyder Act is, in our view, erroneous.

The Snyder Act is a general authorization Act for numerous programs of the Bureau of Indian Affairs. It does not attempt to establish the eligibility requirements or details of any program, but leaves that to the discretion of the Secretary of the Interior and to future Congresses in enacting appropriations. The Act provides in broad terms that "[t]he Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the

<sup>&</sup>lt;sup>1</sup> See State ex rel. Williams v. Kemp, 106 Mont. 444, 78 P. 2d, 585; Cohen, Handbook of Federal Indian Law, pp. 244– 245 (1942 ed.); United States Department of the Interior, Federal Indian Law, pp. 285–287 (1958); Wolf, Needed: A System of Income Maintenance for Indians, 10 Ariz. L. Rev. 597 (1968).

<sup>\*</sup>See 66 Indian Affairs Manual 3.1, 3.4 p. 4, supra. See also the discussion infra at pp. 15-18.

Indians throughout the United States \* \* \* \* \* \* for various purposes that the Act lists. The list of purposes is comprehensive and is obviously intended to include all activities of the Bureau of Indian Affairs (see pp. 2-3, supra).\*

Included in the list of purposes is "general support," which is the subject of this litigation. The basic purpose of the Act is shown by its lauguage to be not an attempt to narrow the broad discretion previously given the Secretary of the Interior over Indian affairs (see pp. 15-16, infra), but simply to serve as an authorization for any appropriation that Congress might subsequently enact.

That this was indeed the purpose of the Act is made clear by its legislative history. H. Rep. No. 275, 67th Cong., 1st Sess. (1921); S. Rep. No. 294, 67th Cong., 1st Sess. (1921); 61 Cong. Rec. 4659, et seq. As the following excerpts from that history show, the skeletal provisions of the Snyder Act were intended to limit neither the Secretary's authority nor Congress' own subsequent actions in passing appropriations.

Ae Representative Kelley, a member of the House Indian Affairs Committee and the first to speak after the bill was introduced, explained in speaking before the House sitting as Committee of the Whole, 6I Cong. Rec. 4659-4660:

<sup>&</sup>lt;sup>a</sup> A critic of the Act describes it as follows: "The Snyder Act is a familiar and somewhat distressing occurrence in the history of Indian affairs. As in other instances, Congress enacted a very general measure and left the rest up to the Secretary of the Interior and the BIA." Wolf, support, 10 Ariz. L. Rev. at 607–608.

Mr. Chairman and gentlemen of the committee, this measure simply makes in order the items which have been carried for many years in the Indian appropriation bills. I helped to take a number of these items out of the last Indian bill through points of order, but it was the most futile effort possible, for they were reinserted in the Senate and in the end nothing was accomplished. I am opposed to legislating on the point-of-order principle, where one man can prevent action by the entire body, and therefore I shall not oppose this measure. \* \* \*

This view of the Act's purpose—to eliminate the basis for point-of-order objections to particular appropriations as not having previously been authorized—was specifically corroborated and further explained by Representative Carter of Oklahoma, also a member of the Indian Affairs Committee, id. at 4671–4672:

Mr. Chairman and gentlemen of the Committee, in view of the turn that this debate has taken and the distance it has drifted afield, it might be well enough to call attention of gentlemen to what this bill really does. The bill does not undertake the enlargement or creation of a single activity which is not now in operation by the Indian Bureau. It simply provides for making certain appropriations in order for activities which have been carried along from year to year by appropriations of money for that year without any specific authorization for the work.

But the difficulty is that no general authorization has been made for many of the Indian Bureau agencies. Like Topsy, "they just growed." An epidemic would break out on some certain reservation and without objection an item would be inserted in the current appropriation bill for its suppression and control. Next, certain Indians would be found wanting to farm but without necessary farming implements and stock, so an industrial item would be inserted and no point of order raised against that. Thus the system grew up, and these different agencies were established by the simple insertion of an appropriation in the annual appropriation act without the passage of any organic act authorizing them.

These appropriations were carried along from year to year as long as the Indian Committee had jurisdiction of appropriations without much friction. But when all appropriations were concentrated in the Committee on Appropriations then the fun began. Before this change the Indian Committee had both legislative and appropriating jurisdiction, and when that committee brought in these unauthorized items points of order were rarely insisted upon because no committee jurisdiction was transgressed and no other committee felt sufficiently aggrieved to kick up the row. When appropriation jurisdiction was taken away from the Indian Committee and the Appropriations Committee brought in their bill carrying those unauthorized propositions that constituted a clear invasion of committee jurisdiction, the Indian Committee rebelled and its membership \* \* \* raised considerable fuss

Any possible remaining doubt about the Act's purpose was then dispelled in the following colloquy, id. at 4672:

Mr. Andrews. Will this bill do anything more than to prevent points of order on the Indian appropriation bill?

Mr. Carrer. Absolutely nothing else. It does not start a single additional agency in the Bureau of Indian Affairs, it does not enlarge their activities, and does not create any new activities. It does nothing more than protect the committee reporting the bill against the whims and peevishness of some Member attacking the bill.

The court of appeals' conclusion (see Pet. App. 19-20) that the Snyder Act has the substantive effect of requiring the Secretary not to distinguish between on and off reservation programs is, therefore, unfounded.

#### II

CONGRESS HAS NOT APPROPRIATED FUNDS FOR GENERAL ASSISTANCE TO OFF-RESERVATION INDIANS IN STATES OTHER THAN OKLAHOMA AND ALASKA

If the Court agrees with our view that the Snyder Act is merely an enabling Act, as its language indicates ("The Bureau of Indians Affairs \* \* \* shall direct, supervise, and expend such moneys as Congress may from time to time appropriate \* \* \*"), the most relevant inquiry is whether Congress appropriated funds for off-reservation general assistance in the fiscal year at issue. The Appropriation Act itself gives no definition to the scope of the general assistance program. It merely states "[f]or expenses necessary to provide education and welfare services for Indians, either directly or in cooperation with States \* \* \*

grants and other assistance to needy Indians \* \* \* \$126,478,000." 81 Stat. 60, see pp. 3-4, supra, for full text of this provision.

The legislative history, however, clearly shows that no monies were appropriated for off-reservation Indian welfare for fiscal year 1968, the year at issue here. While congressional debates on the Department of the Interior appropriations for fiscal year 1968 do not mention general assistance, the hearings before both the House and Senate Committees contain a summary of the Bureau of Indian Affairs' requests for general assistance funds. The requests specify that "General assistance will be provided to needy Indians on reservations who are not eligible for public assistance under the Social Security Act \* \* \* and for whom such assistance is not available from established welfare agencies or through tribal resources." Hearings on Department of the Interior and Related Agencies Appropriations for 1968, H. Subcommittee of the Committee on Appropriations, 90th Cong., 1st Sess., p. 777 (1967), and S. Committee on Appropriations, Hearings, 90th Cong., 1st Sess., p. 695 (1967).

Nor was the situation different in recent prior or subsequent appropriation Acts (see discussion infra).

The hearings for the preceding five years show identically worded requests. Hearings, S. Committee on Appropriations, 89th Cong., 2d Sess., Vol. 8, H.R. 14215, Part I (fiscal 1967), p. 267; Hearings, H. Committee on Appropriations, 89th Cong., 2d Sess., Vol. 16, Interior Appropriations, Part I (fiscal 1967), p. 255; Hearings, S. Committee on Appropriations, 89th Cong., 1st Sess., Vol. 7, H.R. 6767 (fiscal 1966), p. 653; Hearings, H. Committee on Appropriations, 89th Cong., 1st Sess., Vol. 15, Interior Appropriations, Part I (fiscal 1966), p. 747; S. Conterior Appro

There is no indication in the relevant appropriation Acts or their legislative history that Congress intended to expand the Indian welfare program presented to it in the Department's budget request. Indeed, for fiscal year 1968, the Department sought \$129,478,000 for Indian education and welfare services, and Congress appropriated only \$126,478,000. Manifestly, Congress had no intention of substantially increasing the scope of existing and proposed service.

Moreover, Congress legislated in the light of the clear provision in the Department's manual limiting welfare payments to reservation Indians. If Congress

mittee on Appropriaions, 88th Cong., 2d Sess., Vol. 11, H.R. 10433 (fiscal 1965), p. 148; Hearings, H. Committee on Appropriations, 88th Cong., 2d Sess., Vol. 17 (fiscal 1965), p. 775; Hearings, S. Committee on Appropriations, 88th Cong., 1st Sess., Vol. 10, H.R. 5279 (fiscal 1964), p. 70; and Hearings, H. Committee on Appropriations, 88th Cong., 1st Sess., Vol. 16 (fiscal 1964), pp. 843, 844.

The Bureau of Indian Affairs Welfare Program has been codified in its present manual form since May 12, 1952. It is clear that Congress was well acquainted with the scope of the program. In numerous hearings the scope of assistance was clearly brought out. See, e.g., Hearings, H. Committee on Appropriations, 86th Cong., 1st Sess., Vol. 12, p. 800, et seq. (1960) on Department of the Interior appropriations, for fiscal 1960. Testimony of Miss Gifford, Assistant Commissioner of Indian

Affairs (id. at 801):

"I believe the question comes up concerning Indians living off the reservation and who are in need not for these categories but for other types of assistance. In many cases the States and counties say that those Indians ought to be the responsibility of the Bureau of Indian Affairs; that they do not have sufficient funds to take care of them. We have never included in our request for welfare appropriations funds to take care of the needs of those Indians living off the reservation."

See, also, Hearings, S. Committee on Appropriations, 85th

disapproved of this practice, it could have provided otherwise. But Congress took no such action. Thus its appropriation amounted to a ratification of the Department's clear practice. Cf. Red Lion Broadcasting Co. v. Federal Communications Commission, 395 U.S. 367, 382; Old Mission Portland Cement Co. v. Helvering, 293 U.S. 289, 293-294. In addition, Congress has in recent years twice rejected proposals which among other things would have provided for federal off-reservation general assistance for Indians. H.R. 9621, 87th Cong., 2d Sess.; H.R. 6279, 88th Cong., 1st Sess. See App. pp. 94-99, 130-134.

In short, Congress has appropriated no funds for a general assistance program for off-reservation Indians and in the absence of such an appropriation the Secretary of the Interior, as a practical matter, is unable to provide such a program.

#### Ш

THE SECRETARY'S LIMITATIONS ON ELIGIBILITY FOR GEN-ERAL ASSISTANCE BENEFITS ARE A PROPER EXERCISE OF HIS AUTHORITY AND ARE CONSTITUTIONAL

1. Title 25 of the United States Code contains most of the permanent laws relating to Indians as such.

Cong., 2d Sess., Vol. 6, H.R. 10746 (fiscal 1959), p. 291, et seq. And in earlier years, see Hearings, H. Committee on Appropriations, 67th Cong., 4th Sess., pp. 184–185 (1922); Hearings, S. Committee on Appropriations, 77th Cong., 1st Sess., H.R. 4590, Vol. 3, pp. 160–162, 465–466 (1941); Hearings, S. Committee on Appropriations, 80th Cong., 1st Sess., H.R. 3123, Vol. 17, pp. 598–599 (1947); Hearings, S. Committee on Appropriations, 81st Cong., 1st Sess., H.R. 3838, Part I, Vol. 8, pp. 483, 592 (1949); Hearings, S. Committee on Appropriations, 82d Cong., 1st Sess., H.R. 3790, Vol. 8, p. 372 (1951).

While the statutes found there contain rather detailed provisions concerning such matters as allotment of tribal lands (25 U.S.C. 331, et seq.), formation of tribal governments (25 U.S.C. 461, et seq.), lease and sale of Indian lands (25 U.S.C. 391, et seq.), and descent and distribution of trust lands (25 U.S.C. 371, et seq.), there is no such detailed statutory provision for many of the social welfare programs of the Bureau of Indian Affairs. These programs are conducted under the general authorization of the Snyder Act and include the Bureau's law and order programs (25 C.F.R. 11), the Indian Business Development Fund (25 C.F.R. 80), and the general assistance and social welfare program at issue here (66 I.A.M. 3.1; supra, p. 4).

It is obvious that in the operation of these programs, the Secretary must devise rules concerning eligibility. His administrative authority to adopt appropriate regulations, while implicit in the Snyder Act, is also explicitly conferred in the Acts of July 9, 1832, 4 Stat. 564, as amended, 25 U.S.C. 2, and of June 30, 1834, Section 17, 4 Stat. 738, 25 U.S.C. 9.

pp. 463, 363 (180); Harrings, S. Cosmittee on Appropriations, 824 (long. In Sec., H.R. 579, Vol. 8, p. 273 (121).

Some social welfare services are provided by the Bureau pursuant to statutes containing more specific and limited authority: 25 U.S.C. 271, et seq. contains detailed regulations on Indian Education, and 25 U.S.C. 305 authorizes the creation of the Indian Arts and Crafts Board. The Adult Indian Vocational Training Act of 1956, 25 U.S.C. 309, authorizes the Secretary to provide a vocational training program for adult Indians living on or near reservations (emphasis supplied). Indian health services are provided under the authority of the Secretary of Health, Education and Welfare, 42 U.S.C. 2001.

The 1970 census listed the total Indian population of the United States (including Alaska) as \$27,091." These figures include 8,996 Indians living in Chicago, 12,160 living in New York City and 24,509 living in the Long Beach and Los Angeles Metropolitan areas (table 67) with varying degrees of assimilation into the general society. The Department of the Interior's estimates for 1972 show 428,194 Indians living on Indian reservations and in areas under Bureau of Indian Affairs jurisdiction in Oklahoma and Alaska and 205,550 Indians living in counties adjacent to reservation or a total of 533,744 Indians living on or near Indian reservations."

None of the programs operated under the authority of the Snyder Act is designed to benefit directly every American Indian throughout the Nation. For example, the law and order regulations apply only to tribes in which the traditional agencies for enforcement of tribal laws and custom have broken down and for which no adequate substitute has been provided by federal or state law (25 C.F.R. 11.1 (b) and (c)); eligibility for grants from the Indian Business Development Fund depends on whether the project is a profit-making enterprise generating jobs for Indians located on or near a reservation (25 C.F.R.

<sup>&</sup>lt;sup>16</sup> United States Department of Commerce, Bureau of Census, 1970 Census of Population, General Population Characteristics, United States Summary PC (1)—B1 table 48. The census figures are based on responses which do not refer to any particular definition of "Indian".

<sup>&</sup>lt;sup>11</sup> Estimate of Resident Indian Population and Labor Force Status, March 1972.

80.41); and eligibility for the general assistance program itself requires unavailability of general assistance from state, county or local governments, and need, in addition to reservation residency (66 I.A.M. 3.1).

2. The court below held "that Congress intended general assistance benefits to be available to all Indians, including those in the position of appellants, at the time the Snyder Act was passed." Pet. App. 21.1 As we showed in point I, supra, however, the court's use of the Snyder Act as an eligibility standard for Indian general assistance misconstrues the Act. Moreover, to make these benefits available to "all Indians" would substantially diminish the benefits available for those Indians most isolated from ordinary commercial society and would provide benefits to fully assimilated Indians not based on any special relationship with the government and denied to the citizenry at large. There is no reason for imputing to Congress an intention to achieve any such result and, as we showed in point II, supra, the relevant appropriations Acts and their history strongly indicate a contrary intent. The shared band in an application

Respondents, in their Brief in Opposition, do not unqualifiedly embrace the court of appeals' statement that general assistance benefits must be made available

<sup>&</sup>lt;sup>13</sup> The court specifically did "not reach the constitutional due process question raised by [respondents] and express[ed] no view on the issue of whether Congress could, if it so desired, limit general assistance benefits to reservation Indians." Pet. App. 29.

to "all Indians," but suggest an eligibility requirement such as that used by the Public Health Service which would include off-reservation Indians with important tribal ties. See 42 C.F.R. 36.12; Br. in Opp. pp. 6-7. This is a more modest proposal than the apparent holding of the court below. However, the pertinent considerations in establishing eligibility requirements for health services are not necessarily the same as those for General Assistance benefits. For example, Indians both on and off the reservations may have many of the same health problems and may be substantially interdependent as a public health matter because of frequent contacts with each other. And once a hospital or other health facility has been built, it may be advantageous to make it available to the largest number of people legally possible under the statutes authorizing its operation. But in dispersing funds for General Assistance where a limited total fund may be available, different criteria may seem appropriate. We do not argue the wisdom of one eligibility requirement over another, but merely that Congress in authorizing the program has not prescribed detailed eligibility criteria and that the choice among reasonable alternatives rests properly with the Secretary of the Interior and with Congress in its appropriations processes.

The decision to restrict eligibility for certain Indian benefits to Indians residing on reservations and under the jurisdiction of the Bureau of Indian Affairs in

of the word "Indian" for this purpose. Br. in Opp., pp. 6-7.

Oklahoma and Alaska has a reasonable basis. It invokes a traditional distinction between on-reservation and off-reservation activities that this Court has recognized for various purposes. Only recently, in Mescalero Apache Tribe v. Jones, No. 71-738, decided March 27, 1973, in drawing a distinction between taxation of Indian tribes for activities on or off reservation, the Court stated (slip op., p. 4):

But tribal activities conducted outside the reservation present different considerations. "State authority over Indians is yet more extensive over activities " " not on any reservation." Organized Village of Kake, " " [369 U.S. 60] at 75. Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State.

We do not argue that the jurisdiction of the Secretary of the Interior to render service to Indians ends at reservation boundaries. But Indians who live off reservations have submitted themselves to a different governmental structure than those who live off reservations. They depend much more on the tribal government and the federal government as trustee than do those living off reservation, particularly on nonrestricted land. Thus, on reservations, where the authority of the Secretary of the Interior is greater and the authority of the States is less, the responsibility of the federal government for assuring that the special needs of the Indian inhabitants are met is also greater. Moreover, because reservations were often established in remote places with inadequate resources, job opportunities have been particularly lacking on reservations and the need for special assistance to the chronically unemployed has been particularly acute. While the situation of some urban Indians is bleak, the decision to seek a different way of life in the larger society is usually a voluntary one, and the Indians' situation is shared by many other migrants to cities, all of whom have equal access to ordinary state and federal benefits.

The situation of Indians in Alaska and Oklahoma has historically been unique. Much of Oklahoma was once set aside as an Indian Territory, and though most of the reservations have been abolished, there remains a large area of concentrated Indian population with tribal organization, living on land held in trust by the United States. See, generally, U.S. Department of the Interior, Federal Indian Law, pp. 985-1051 (1958). A similar situation of large concentrations of native Americans, with few reservations and substantial separate legislation prevails in Alaska (id. at 927-964). The responsibilities of the Bureau of Indian Affairs in these jurisdictions are substantially similar to the Bureau's responsibilities on the reservations.

In Dandridge v. Williams, 397 U.S. 471, aware of the difficulty of dividing limited funds among competing classes of welfare claimants, this Court upheld the State's choices against the contention that they

<sup>&</sup>lt;sup>14</sup> See Taylor, Indian Munpower Resources: The Experiences of Five Southwestern Reservations, 10 Ariz. L. Rev. 579 (1968); Wolf, Needed: A System of Income Maintenance for Indians, 10 Ariz. L. Rev. 597 (1968).

violated the Equal Protection Clause of the Fourteenth Amendment. The Court reiterated that (id. at 485):

In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis." it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78. "The problems of government are practical ones and may justify, if they do not require, rough accommodations-illogical, it may be, and unscientific." Metropolis Theatre Co. v. City of Chicago, 228 U.S. 61, 69-70. "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." McGowan v. Maryland, 366 U.S. 420, 426.

These premises led the Court to conclude (397 U.S. at 487):

Procedural safeguards upon systems of welfare administration, Goldberg v. Kelly, ante, p. 254. But the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients. Cf. Steward Mach. Co. v. Davis, 301 U.S. 548, 584-585; Helvering v. Davis, 301 U.S. 619, 644.

See, also, Jefferson v. Hackney, 406 U.S. 535, 546-547.

In Richardson v. Belcher, 404 U.S. 78, the Court applied a similar test to a federal welfare provision attacked as invalid under the Due Process Clause of the Fifth Amendment, holding (id. at 84):

We have no occasion, within our limited function under the Constitution, to consider whether the legitimate purposes of Congress might have been better served by applying the same offset to recipients of private insurance, or to judge for ourselves whether the apprehensions of Congress were justified by the facts. If the goals sought are legitimate, and the classification adopted is rationally related to the achievement of those goals, then the action of Congress is not so arbitrary as to violate the Due Process Clause of the Fifth Amendment.

Here, the Secretary of the Interior has repeatedly requested and Congress has repeatedly appropriated funds for general assistance to be provided only to Indians residing on Indian reservations or in areas under the jurisdiction of the Bureau of Indian Affairs in Alaska or Oklahoma (see point II, supra). That determination by both the Executive and the Congress that these are areas of special need and special responsibility is reasonably based on substantial legal and factual considerations, and is in no way violative of the Fifth Amendment of the United States Constitution.

## See Siso, Independ more part of the U.S. 535, 1546-

For the foregoing reasons the judgment of the court of appeals should be reversed.

Respectfully submitted.

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### In the Supreme Court of the United States

OCTOBER THEM, 1973

Bosms O. B. Mosrow, Secretary of the Interior, Petitioner,

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BANON BUIL and ANTIA BUIL, Respondents.

On Writ of Curticust to the United Sintes Court of Appending the Sinth Chesti

MATRIEF OF AMICUS CURIAE
MATRIVE AMERICAN RIGHTS FUED

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### In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1052

ROGERS C. B. MORTON, Secretary of the Interior, Petitioner,

v.

RAMON RUIZ and ANITA RUIZ, Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

# BRIEF OF AMICUS CURIAE NATIVE AMERICAN RIGHTS FUND

#### INTEREST OF AMICUS CURIAE

The Native American Rights Fund (NARF) is a nonprofit law firm funded by private foundations, charitable contributions, and some government grants. NARF attorneys are engaged exclusively in representing individual Indians and Indian tribes, almost all of whom are financially unable to retain other counsel. The outcome of this case will affect nearly all indigent non-reservation Indians and thus is of vital importance

to a large number of NARF's clients. Insofar as the discretion of the Secretary of Interior may be found to be so unbridled as to permit him to limit federal services to Indians through arbitrary and restrictive interpretations of the Snyder Act, virtually all of NARF's clients will be affected. A determination of limits of secretarial discretion in the field of Indian affairs necessarily determines the extent of the federal trust relationship and accountability of the government to all Indians.

#### SUMMARY OF ARGUMENT

The Snyder Act was correctly construed by the Court of Appeals as requiring that Indians throughout the country be within the coverage of Bureau of Indian Affairs programs. As such, the Act does not grant the Secretary the discretion to make an intradepartmental instruction excluding approximately one-half of the Indians in the country simply by reason of their residency. The Secretary thus has attempted rule-making beyond his statutory authority. Furthermore, only a regulation promulgated pursuant to the rule-making procedures of the Administrative Procedure Act would suffice where the substantive rights of a large group of persons are affected.

In any event, determinations by the Secretary of what classifications of Indians are eligible to receive Bureau of Indian Affairs welfare benefits must be based upon factors which are relevant to the Act and the purposes of the program. Blanket exclusion of nearly all Indians who happen to reside outside Indian reservations was made by the Secretary without reference to any such relevant factors. Indeed, the exclusion is contrary to the objectives of national Indian policy. Judged by the high standards the special trust

relationship with Indians imposes upon the federal establishment, the Secretary's arbitrary denial of Snyder Act benefits cannot withstand judicial scrutiny.

#### I.

#### ARGUMENT

IF CONGRESS INTENDED TO GIVE THE SECRETARY BROAD DISCRETION TO DETERMINE THE CLASS OF INDIAN BENEFICIARIES OF THE SNYDER ACT, IT WOULD HAVE DONE SO EXPRESSLY.

The Court of Appeals applied the ordinary meaning rule of statutory construction and concluded that there is nothing "equivocal" about the requirement in the Snyder Act that assistance be provided to Indians throughout the United States. Further, the Court of Appeals found that the legislative and administrative background of the Act evidenced a congressional intent to protect the general welfare of Indians, irrespective of their place of residence.

By contrast, the Secretary asserts that the Act was merely a general authorization for future appropriations, enacted to replace the former congressional practice of dealing annually with Indian legislation. Nothing in the Secretary's explanation that the Snyder Act was enacted to eliminate confusion caused by individual congressmen's point-of-order objections to particular appropriations (Pet. Br. pp. 9-12), supports the Secretary's conclusion that the Snyder Act did not present a congressional mandate. Indeed, viewing the Secretary's thesis from a vantage point most favorable to him, it suggests that Congress may

<sup>&</sup>lt;sup>1</sup> Ruiz v. Morton, 462 F.2d 818, 820 (9th Cir. 1972). Even if this language could be viewed as containing ambiguities, statutes providing benefits for Indians are to be liberally construed. Squire v. Capoeman, 351 U.S. 1, 6-7 (1956).

have intended by the Act to reserve to itself the right to impose additional limitations on Snyder Act benefits through annual appropriation acts. But, as the Court of Appeals found, Congress has never utilized its appropriative power to limit the Snyder Act mandate to reservation Indians. Certainly Congress' failure to amend the Snyder Act or otherwise to modify its mandate cannot give rise to an inference of approval of an unpublished intra-agency instruction which is contrary on its face to the act. Wong Yang Sung v. McGrath, 339 U.S. 33, 47 (1950).

The Secretary submits (Pet. Br. 9) that the Snyder Act leaves the scope of Indian benefits to be determined not only through future congressional appropriations but also through the broad discretion of the Secretary. However, the Secretary's discretion with respect to Indians is limited to the degree of discretion specifically vested in him by Congress. See, Tooahnippah v. Hickel, 397 U.S. 598 (1970). When Congress has decided to give the Secretary the discretion to determine the ultimate beneficiaries of a congressional act favoring Indians, it has done so expressly. Thus, in dealing with Indian school expenditures, Congress in 25 U.S.C. § 295 expressly stated that all expenditures

shall be at all times under the supervision and direction of the Commissioner of Indian Affairs, and in all respects in conformity with such conditions, rules, and regulations as to the conduct and methods of instruction and expenditure of money as may be from time to time prescribed by him, subject to the supervision of the Secretary of the Interior.

<sup>&</sup>lt;sup>2</sup> The Secretary has delegated his authority in this respect to the Commissioner of Indian Affairs. 230 Department of the Interior Manual § 2.1; 25 U.S.C. § 2.

In providing for Indian school facilities, Congress in 25 U.S.C. § 292 expressly stated that:

The Commissioner of Indian Affairs may, when in his judgment the good of the service will be promoted thereby, suspend or discontinue any reservation Indian school.

In authorizing the Secretary to assist aged allottees, Congress in 25 U.S.C. § 306a expressly provided that:

[T]he Secretary of the Interior is authorized in his discretion and under such rules and regulations as he may prescribe, to make advances to old, disabled, or indigent Indian allottees, for their support.

In dealing with the problem of Indian non-attendance at school, Congress stated in 25 U.S.C. § 283 that:

The Secretary of the Interior may in his discretion withhold rations, clothing and other annuities from Indian parents or guardians who refuse or neglect to send and keep their children of proper school age in some school.

In authorizing the Secretary to expend monies to establish training schools for Indians from nomadic tribes, Congress expressly provided in 25 U.S.C. § 276:

That moneys appropriated or to be appropriated for general purposes of education among the Indians may be expended, under the direction of the Secretary of the Interior, for the education of Indian youth at such posts, institutions, and schools as he may consider advantageous . . . .

For the Secretary to disregard this pattern of express congressional delegation and to claim the full

<sup>&</sup>lt;sup>3</sup> Other congressional enactments to aid Indians expressly authorize the Secretary to determine the class of Indian beneficiaries. See, e.g., 25 U.S.C. §§ 121, 285, and 452.

discretion to exclude a large class of Indian beneficiaries of an act which fails to give him such discretion is a violation of the Secretary's duty to act as a trustee of Indian people, to construe liberally statutes providing benefits for Indians, and to refrain from adding non-authorized criteria to congressional enactments affecting Indians. Furthermore, the Secretary's action is beyond the scope of his authority as defined by the Snyder Act and therefore should be held to be unlawful.

#### 11.

UNDER THE ADMINISTRATIVE PROCEDURE ACT, THE SECRETARY'S USE OF A NON-PUBLISHED AGENCY INSTRUCTION TO DEFINE THE CLASS OF INDIAN BENEFICIARIES OF THE SNYDER ACT IS UNLAWFUL AND THE INSTRUCTION DOES NOT HAVE THE FORCE OF LAW.

Under the Snyder Act, the Secretary has been given authority to expend monies appropriated by Congress for Indians throughout the United States. Amicus has demonstrated that Congress did not give the Secretary the express authority to issue rules and regulations which restrict the class of beneficiaries under the Act or which are otherwise inconsistent with the Act's language. The Secretary does have, however, the implicit authority to establish agency procedures and

<sup>&</sup>lt;sup>4</sup> Seminole Nation v. United States, 316 U.S. 286, 297 (1942). That Indians are dealt with collectively by the legislation does not detract from the fact that "the legislation confers individual rights" which must be respected by those administering it. Cf., McClanahan v. Arizona Tax Commission, — U.S. —, 36 L.Ed. 2d 129, 141 (1973).

<sup>&</sup>lt;sup>8</sup> Squire v. Capoeman, supra.

<sup>&</sup>lt;sup>6</sup> Tooahnippah v. Hickel, supra.

<sup>&</sup>lt;sup>7</sup>5 U.S.C. § 706(2)(A) and (C); Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402 (1971).

guidelines necessary for an efficient distribution of those funds. Pursuant to that authority, the Secretary issued a Bureau of Indian Affairs Manual without undertaking formal rule-making procedures. In the manual the Secretary included an instruction which purported to limit eligibility only to reservation Indians subject to two exceptions which are not explained.

Under the Administrative Procedure Act (APA). 5 U.S.C. § 553, where an agency decision is of general applicability and has a substantial impact on the agency's clientele, the agency is required to undertake formal rule-making in order to provide the persons affected with notice and an opportunity for comment. Abbott Laboratories v. Gardner, 387 U.S. 136 (1967). This court has ruled that the statutory right to welfare benefits is a substantial one, providing a recipient with essential food, clothing, housing and medical care. Goldberg v. Kelly, 397 U.S. 254, 264 (1970). Accordingly, the failure of the Secretary to follow the APA rule-making requirements in purporting to determine the ultimate beneficiaries of the Snyder Act, renders the agency instruction void. NLRB v. Wuman-Gordon Co., 394 U.S. 759 (1969).\* Also, the Secre-

<sup>&</sup>lt;sup>8</sup> The Secretary cannot avoid the APA requirements by categorizing his instruction as one relating to a grant and thus exempt from the APA under 5 U.S.C. § 553(a) (2). The instruction has broad substantive impact on all Indians and indeed abrogates the possibility of Snyder Act benefits for nearly half a million Indians who reside off their reservations. Thus, this instruction is distinguishable from the Department of Health, Education and Welfare handbook regulations determining simply the time in which state welfare agencies may take action on new applications made by welfare recipients which was declared to be a regulation "relating to a federal grant" and thus exempt from the formal rule-making requirements of the APA. Rodriguez v. Swank, 318 F. Supp. 289 (D. Ill. 1970), aff'd, 403 U.S. 901 (1971).

tary's failure to publish the instruction concerning eligibility violates 5 U.S.C. § 552(a)(1)(D) as well as the introduction to the Bureau of Indian Affairs Manual (O-I.A.M. § 1.2) (O I.A.M. § 1.2A).

If the court should find that the APA rule-making requirements have not been violated by the Secretary's action because the Secretary's instruction is an interpretative rule, to which the notice or hearing requirements of the APA do not apply under 5 U.S.C. § 553(b), then the instruction cannot be allowed to determine broad substantive rights. Interpretative rules outside the APA are to be distinguished from legislative rules issued by an agency under APA rulemaking procedures and pursuant to a specific legislative grant of law-making power." The Court of Appeals for the District of Columbia, per Judge, now Chief Justice, Borger, held that an interpretative rule of the Federal Maritime Commission did not authorize penalties for its violation, finding that the only penalties for action contrary to the rule are those penalties which were applicable before promulgation and independent of the rule, i.e., penalties provided by the act itself. American President Lines Ltd. v. Federal Maritime Comm., 316 F.2d 419 (D.C. Cir. 1963). The court concluded. "Neither the affected parties nor the courts are bound by it unless they elect to adopt it as a correct interpretation of the statute." 316 F.2d at 422.

Therefore, the Secretary's instruction, if not promulgated unlawfully, is at best informal agency action

The Secretary of the Interior regularly has issued formal legislative regulations with respect to those discretionary powers expressly provided by Congress. See, e.g., 25 C.F.R. Part 34 issued pursuant to 25 U.S.C. § 309. Such formally published regulations directly authorized by statute have the force of law. Abbott Laboratories v. Gardner, supra, at 151-52.

interpreting a federal statute. It may neither determine substantive rights nor be afforded the weight attributed to a published regulation of long standing.10 Barlow v. Collins, 397 U.S. 159 (1970). In Barlow this Court reviewed a regulation of the Secretary of Agriculture and found that since the principal dispute centered on whether the Secretary's regulation was authorized by the Food and Agriculture Act of 1965, 7 U.S.C. § 1444(d), the question to be decided involved the meaning of a statutory term and would be resolved "not on the basis of matters within the special competence of the Secretary, but by the judicial application of canons of statutory construction." 397 U.S. at 166. Thus, in this Court's view the validity of the regulation presented issues on which the courts and not administrators were more expert. See also Federal Maritime Comm'n v. Sea Train Lines, - U.S. -, 36 L.Ed. 2d 620, 633, 634 (1973).

Applying the Barlow standard of judicial review to the present agency action, it is apparent that Congress expressed in the Snyder Act its clear intention to provide benefits to Indians living off as well as on their reservations, reserving to itself the right through annual appropriations to limit the class of potential Indian beneficiaries. The Secretary, having failed to show a pattern of subsequent congressional limitation, cannot usurp the congressional function by utilizing an unpublished agency instruction.

<sup>&</sup>lt;sup>10</sup> In this regard, the Secretary's instruction is distinguishable from the regulation in *Udall v. Tallman*, 380 U.S. 1 (1965), cited by the dissenting judge in the Court of Appeals. Unlike this case, in *Udall*, the regulation was a formal public land order, publicly issued pursuant to an express statute giving the Secretary the power to lease, and consistently followed by the Secretary. Oil and gas lessees had expended millions of dollars in reliance upon the validity of the regulation.

#### ш.

IF THE SECRETARY HAD DISCRETION TO EXCLUDE CER-TAIN CLASSES OF INDIANS FROM BUREAU OF INDIAN AFFAIRS BENEFITS, THE AGENCY INSTRUCTION HERE WAS AN ABUSE OF DISCRETION.

As we have indicated, the Secretary is charged with the responsibility of making decisions and establishing procedures for the orderly and efficient administration of the Bureau of Indian Affairs welfare program. He does not have authority or discretion under any act of Congress to determine arbitrarily as between all possible recipients that some persons shall receive benefits and others will not. Certainly promulgation of reasonable eligibility rules, consistent with the authorization and appropriation acts and with the established national policy toward Indians is within his discretion. Here the Secretary's instruction to effect an exclusion of most non-reservation Indians serves only to frustrate congressional intent and policies. Although the Secretary rationally might circumscribe the class of persons to receive Bureau of Indian Affairs welfare as less than all Indians, he has not done so here.

### A. The Secretary's Instruction Is Arbitrary in That It Is Not Based Upon Relevant Factors.

Factors relevant to whether or not to extend Bureau of Indian Affairs welfare benefits to one potential class of recipients and not to another might include need, degree of cultural and social assimilation, tribal relationships, and connection with an Indian community or reservation. The Secretary's practice here does not reflect, however, a rational consideration of such factors. Merely limiting benefits to Indians living on reservations or in Oklahoma or Alaska (regardless of whether they reside upon a reservation) is not and could not be based upon these or any other relevant

factors. In fact, the Secretary has offered no reasons for his determination to deny benefits solely on residency. It has long been established that a regulation interpreting a statute must be reasonable as well as consistent with the statute. Manhattan General Equipment Co. v. Commissioner of Internal Revenue, 297 U.S. 129, 135 (1936). Here, only the excuse of some degree of secretarial discretion is offered to justify the departmental instruction in question; no amount of discretion is a substitute for a rational determination taking into account relevant criteria.<sup>11</sup>

Administrators of welfare programs often are confronted with a shortage of funds to meet the needs of all potential recipients. Cognizant of this fact, the Court has been liberal in allowing states to use various means to allocate limited welfare funds among recipients, such as setting maximum family benefits where the practice is rationally supportable on legitimate grounds. Dandridge v. Williams, 397 U.S. 471 (1970). However, the Secretary's instruction in this case must be distinguished from the statutory classification in Dandridge, supra, because it results not in merely a

<sup>&</sup>lt;sup>11</sup> Beyond constituting an abuse of discretion, the instruction has the effect of creating "an irrebutable presumption often contrary to fact," that non-reservation Indians are not in need of general assistance and it "therefore lacks critical ingredients of due process." United States Department of Agriculture v. Murry, 41 U.S.L.W. 5099, 5101 (U.S. June 25, 1973). In Murry, this Court held unconstitutional parts of a federal statute, the Food Stamp Act, 7 U.S.C. § 2011 et seq., for violating the due process clause of the fifth amendment. In the present case the Secretary's instruction creating a legal classification of eligible Indians based solely upon residence would also appear to be violative of due process standards. See Vlandis v. Kline, 41 U.S.L.W. 4796 (U.S. June 11, 1973); Stanley v. Illinois, 405 U.S. 645 (1972); Bell v. Burson, 402 U.S. 535 (1971).

disparity in benefits, but rather in the total denial of benefits.<sup>12</sup> There are no grounds to explain the Secretary's exclusion, other than economy. Neither the government's desire to conserve funds nor remote administrative benefit justifies the Secretary's class distinction among Indians.<sup>13</sup> If funds are inadequate, an appeal can be made to Congress to appropriate more. If entire classes of beneficiaries are to be eliminated from the program for economy or other reasons, it must be done on some rational basis consistent with the purposes of the program or by action of Congress.<sup>14</sup>

A comparison of the instruction in the Indian Affairs Manual with other definitions of classes of

<sup>12</sup> This Court has suggested that a classification, such as the present one, resulting in a total denial of benefits might well interfere with a fundamental right, giving rise to strict scrutiny on judicial review. San Antonio School District v. Rodriguez, — U.S. —, 36 L.Ed.2d 16, 45 (1973).

<sup>&</sup>lt;sup>13</sup> Cf., Oyama v. California, 332 U.S. 633, 646-47 (1948). The Secretary's concern over a shortage of funds may be overstated. The Bureau of Indian Affairs welfare program is merely supplemental; it is available only where a potential recipient, such as Mr. Ruiz, meets its eligibility standards, but has no state benefits available to him. See, 66 Indian Affairs Manual § 3.1.4B. The obvious logic of the supplemental nature of the Bureau of Indian Affairs welfare program is to avoid wasteful overlap or conflict with state programs.

LEd.2d 318 (1973), this Court upheld an administrative extension of coverage under the Truth in Lending Act, 15 U.S.C. § 1604, finding that the Federal Reserve Board had the express statutory authority to issue remedial regulations necessary to assure the legislation's full coverage. Unlike the Federal Reserve Board's extension of credit information coverage, the Secretary's removal of a large class of Indians from the coverage of the Snyder Act was effected without any pretense that it furthered the purpose of the Act.

Indians to be served by other federal programs designed to assist Indians helps to illustrate the glaring lack of rationality in the Secretary's on reservation-off reservation classification for welfare services. For instance, the regulation setting standards of eligibility for Indian health services states:

Generally an individual may be regarded as within the scope of the Indian health and medical service program if he is regarded as an Indian by the community in which he lives as evidenced by such factors as tribal membership, enrollment, residence on tax exempt land, ownership of restricted property, active participation in tribal affairs, or other relevant factors in keeping with general Bureau of Indian Affairs practices in the jurisdiction. (42 C.F.R. § 36.12(a)(2)).

The regulations also set out priorities based on medical need when there are insufficient resources for all eligible persons. 42 C.F.R. § 36.12(c). These regulations stand in sharp contrast to the on reservation-off reservation distinction by including factors related to the purpose of Indian health care programs, degree of assimilation, and medical need.

Likewise, eligibility for other Bureau programs is more specifically prescribed, generally by an appropriately promulgated regulation. E.g., 25 C.F.R. §§ 22.3, 22.8. (Education in contract schools); 25 C.F.R. § 31.1 (Boarding schools); 25 C.F.R. § 32.1 (Educational loans); 25 C.F.R. § 33 (Contracts with public schools); 25 C.F.R. § 34.3 (Vocational training); 25 C.F.R. § 80.41 (Indian Business Development Fund); 25 C.F.R. § 91.2 (General credit). It is useful to note that all such regulations include some standards

which take into account variable factors which arguably relate to the specific program's objectives. None of them rely strictly upon an on reservation-off reservation classification.<sup>15</sup>

Even the Secretary has excepted off reservation Indians in two states—Alaska and Oklahoma—from the general rule. The Secretary argues that the situation of Indians in those states is "unique," 16 but as Respondents show in their brief, most of the same attributes accounting for Oklahoma's alleged uniqueness are attributable to Arizona. Amicus submits that there are numerous other states where the same or similar rationale could be offered for an extension of Bureau welfare services.

Judged by normal standards for review of administrative determinations, the Secretary's instruction does not measure up because it is not based upon factors which are relevant to the purposes which Congress seeks to accomplish by the Snyder Act and which are

<sup>15</sup> The only authority cited by the Secretary to justify such a classification is *Mescalero Apache Tribe v. Jones*, — U.S. —, 36 L.Ed.2d 114 (1973).Pet. Br. p. 20. Of course, questions of the extent of state civil or criminal jurisdiction may turn upon the location of reservation boundaries, but there is no question of jurisdiction here and the reasoning in cases such as *Mescalero* is plainly irrelevant.

<sup>16</sup> Pet. Br. p. 21.

<sup>17</sup> Res. Br. part III.

<sup>&</sup>lt;sup>18</sup> In California, for instance, there are large numbers of Indians with tribal organizations, but reservations accommodate only a fraction of the Indians in that state. See, L. Sclar, Participation by Off-Reservation Indians in Programs of the Bureau of Indian Affairs and the Indian Health Service, 33 Mont. L. Rev. 191, 199, and 221-22 (1972).

legitimate for the Bureau of Indian Affairs welfare program administered under the Act. Viewed in the broader context of overall national Indian policy and the special trust relationship the Secretary has to Indians, any doubts which may still exist are easily dispelled.

B. Application of the Secretary's Instruction Is Inconsistent With National Indian Policy and the Special Relationship Between the Nation and Indians.

In 1922 when Congress was considering the Snyder Act, its prevailing mood was one of concern for the lack of opportunities on Indian reservations plagued with social and economic blight. There was strong sentiment that Indians should be encouraged to move off their reservations and be absorbed into the dominant society. Subsequently, the Nation's policies concerning Indians varied greatly, but none of the identifiable policies as manifested in legislation and official pronouncements justifies the Secretary's decision in 1952 to exclude most non-reservation Indians from Bureau of Indian Affairs welfare benefits to which they otherwise would have been entitled. In fact the contrary is true.

The early goals of assimilation and "civilization" of American Indians<sup>20</sup> certainly would not be served by creating a disadvantage to those, like Respondents Mr. & Mrs. Ruiz, who moved off the reservation to

<sup>19</sup> See, e.g., 61 Cong. Rec. 4660-73.

<sup>&</sup>lt;sup>20</sup> These were among the announced objectives of the allotment policy. See, General Allotment Act, Act of February 8, 1887, 24 Stat. 388 (1887); Poafpybitty v. Skelly Oil Co., 390 U.S. 365, 369 (1968).

obtain access to employment. Denying aid comparable to that which would be available to them on the reservation during times of special emergencies—such as the strike which closed the Phelps-Dodge copper mines for several months in 1967 and 1968—creates a disincentive to their continuing pursuit of economic independence.

Even the federal policy in the 1950's of terminating federal supervision over Indians and withdrawing the federal government from Indian affairs at the earliest time possible was intended in part to encourage Indians to develop self-sufficiency apart from their reservations.<sup>21</sup>

Now that termination has been repudiated as official Indian policy, and has been replaced by a policy of maximizing Indian self-determination without shirking federal obligations to Indians,<sup>22</sup> there is no justification for penalizing those who choose to leave the reservation. If self-determination means anything, it means that choices about one's own destiny should be made free from governmental coercion or paternalistic direction in whatever cloak.

The federal policies of allotment and termination have left many Indians without reservation lands.<sup>23</sup> Still other Indians reside on reservations not recognized as such by the government because the land is

<sup>&</sup>lt;sup>21</sup> H.R. Con. Res. 108, 83rd Cong., 1st Sess., 99 Cong. Rec. 10815 (1953); see also, Menominee Tribe v. United States, 391 U.S. 404, 408 (1968).

<sup>&</sup>lt;sup>22</sup> See, President's Message to Congress on Indian Affairs, 116 Cong. Rec. 23131 (July 8, 1970).

<sup>23</sup> See, Sclar, supra, at 221-222.

not held in federal trust.34 Similarly, the residence of many Indians away from their former reservation homes is the product of often unsuccessful federal programs, such as the Bureau of Indian Affairs relocation program," designed to move Indians into urban areas where they might have greater employment opportunities. It would be especially harsh, indeed unconscionable, to deny assistance to Indian people who today reside off their reservations as a result of federal enactments and policies which have enticed them to leave their reservations or which have left Indians with only a portion of their former lands.26 Indeed, this Court has held that the privations the federal government historically has visited upon Indians justify special government benefits for them, regardless of whether or not they live on reservations. Board of County Commissioners of Creek County v. Seber. 318 U.S. 705 (1943).

While Congress has not prescribed with specificity how the Secretary is to administer the Indian welfare system, it is clear that his decisions must not contradict overall congressional policies in the area. Administrators are charged with responsibility for

<sup>&</sup>lt;sup>24</sup> Ibid; see, e.g., F. O'Toole and T. Tureen, State Power and the Passamoquoddy Tribe, 23 Maine L. Rev. 1 (1971).

<sup>&</sup>lt;sup>25</sup> 25 U.S.C. § 309. Some of the reasons for the lack of success of this program are noted in Comment, *Indians: Better Dead than Red?*, 42 So. CAL. L. REV. 101, 118 (1968).

<sup>&</sup>lt;sup>26</sup> It should be noted that the Respondents in the present case reside on land which the Indian Claims Commission found to have been illegally taken from their tribe by the United States. *Papago Tribe of Arizona v. United States of America*, 19 Ind. Cl. Comm. 394 (1968).

adhering to expressions of national policy and their actions are reviewed within that framework. E.g., Mourning v. Family Publications Service, supra (national consumer protection policies); H & H Tire Co. v. United States Department of Transportation, 471 F.2d 350 (7th Cir. 1972) (national highway safety policies); Shannon v. United States Department of Housing and Urban Development, 436 F.2d 809 (3rd Cir. 1970) (national housing discrimination policies); Zabel v. Tabb, 430 F.2d 199 (5th Cir. 1970) (national environmental policies); Scenic Hudson Preservation Conf. v. Federal Power Comm'n, 354 F.2d 608 (2d Cir. 1965) (national water resources development policies).

Moreover, courts have imposed limits upon administrative discretion in the field of Indian Affairs which are considerably more stringent than in other areas.

Under a humane and self-imposed policy which has found expression in many acts of Congress and numerous decisions of this Court, [the Nation] has charged itself with moral obligations of the highest responsibility and trust. [The government's] conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be judged by the most exacting fiduciary standards. (Seminole Nation v. United States, supra at 296-97)

See also, Kale v. Hickel, — F.2d —, No. 26,020 (9th Cir. January 18, 1973); Rockbridge v. Lincoln, 449 F.2d 567, 570 (9th Cir. 1971); and Pyramid Lake Painte Tribe v. Morton, 354 F. Supp. 252, 255-56 (D.D.C. 1973); cf. Tooahnippah v. Hickel, supra.

#### CONCLUSION

Amicus Curiae respectfully requests that the decision and order of the United States Court of Appeals for the Ninth Circuit be affirmed.

Respectfully submitted,

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August 3, 1973

# IN THE SUPREME COURT OF THE UNITED STATES ILED

OCTOBER TERM, 1973

Supreme Court, U.

AUG 7 1973

MICHAEL BODAK, JR., 61

72-No. #-1052

ROGERS C.B. MORTON, SECRETARY OF THE INTERIOR,

PETITIONER

RAMON RUIZ AND ANITA RUIZ,

RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

> BRIEF FOR CALIFORNIA INDIAN LEGAL SERVICES, AMICUS CURIAE

> > Lee J. Sclar Bruce R. Greene Herbert A. Becker CALIFORNIA INDIAN LEGAL SERVICES 2527 Dwight Way Berkeley, California 94704 Amicus Curiae In Support of Respondents

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# IN THE SUPREME COURT OF THE UNITED STATES OCTOBER TERM, 1973

No. 72-1052

ROGERS C.B. MORTON, SECRETARY
OF THE INTERIOR,

PETITIONER

٧.

RAMON RUIZ AND ANITA RUIZ,

RESPONDENTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR CALIFORNIA INDIAN LEGAL SERVICES, AMICUS CURIAE

### INTEREST OF AMICUS CURIAE

This case will decide whether statutes and the Constitution empower the Bureau of Indian Affairs to exclude off-reservation Indians from the Bureau's general assistance program.

California Indian Legal Services

(CILS) has a twofold interest in the out-

Pirst, CILS represents the plaintiffs in Croy v. Morton, Civil No. S-2305, United States District Court for the Eastern District of California. Those plaintiffs assert the right of off-reservation rural California Indians to share in the BIA's housing improvement program. Housing improvement, like general assistance, is part of the BIA welfare program funded under 25 U.S.C. §13.

Croy was filed December 22, 1971.

The district court has suspended all proceedings pending the disposition of this case.

California Indian Legal Services also has a more general interest in this case. Over 85,000 Indians in California live off-reservation — a higher number than in any state except Oklahoma. Less than 15% of native California Indians and only 6% of all Indians in California live on reservations. Among those states with 20,000 or more Indians only Alaska and Oklahoma have a lower percentage of reservation residents. Morton v. Ruiz thus has enormous significance for poor California Indians to whom CILS provides

free legal assistance.

# STATEMENT OF THE CASE

Respondents Ramon and Anita Ruiz are husband and wife and members of the Papago tribe.

In 1940 they left the Papago Reservation to find employment. Ramon Ruiz was hired by a mining company in Ajo, Arizona, a town 15 miles away. The Ruizes settled in the part of Ajo populated almost entirely by Papagos and known as "Indian Village."

The Ruizes have lived in Indian Village ever since. They have a minor daughter. Their principal language is Pagago.

From July 1967 to March 1968 a strike closed the mines where Ramon Ruiz is and has been employed continuously since 1940.

Mr. Ruiz was unable to find other work.

His sole income was \$15 per week in union strike benefits. Mrs. Ruiz added \$8 per week by working four hours per day, two days a week at \$1 per hour. (A. 18-19.)

Mr. Ruiz sought state welfare.
Because his \$15 per week was from a union,

<sup>1.</sup> This statement of facts is based upon the Agreed Statement of Facts (A.45-48) and the Court of Appeals' opinion, Petition For A Writ Of Certiorari, Appendix A.

the Arizona Department of Public Welfare ruled Mr. Ruiz ineligible.

The Ruizes then applied for general assistance benefits from the Bureau of Indian Affairs. On December 13, 1967, the Bureau turned the Ruizes down. The sole reason was that Part 66, Section 3.1.4(A) of the Bureau of Indian Affairs Manual (hereinafter cited as BIAM) requires a general assistance recipient to live on a reservation except in Alaska and Oklahoma. An Indian striker and his wife residing on a reservation with a child and receiving Mr. Ruiz' union benefits plus the eight dollars a week Mrs. Ruiz received at her dollar an hour job would have been granted BIA general assistance. (A-21.)

After two fruitless administrative appeals the Ruizes filed swit on February 19, 1968. They claimed that 66 BIAM 3.1.4(A) is illegal and unconstitutional. The district court granted the Government a summary judgment without any opinion. The court of appeals reversed. It held that 66 BIAM 3.1.4(A) is inconsistent with the unambiguous terms of the Snyder Act, 25 U.S.C. \$13, and is not sanctioned by later appropriation laws.

#### SUMMARY OF ARGUMENT

The Snyder Act, 25 U.S.C. \$13, directs the Bureau of Indian Affairs to expend appropriations for "assistance of the Indians throughout the United States." The act gives the BIA no discretion to restrict that class of assistance recipients. The act's sole purpose was to stop individual Congressmen from striking, without a vote, parts of BIA appropriation bills which, contrary to House rules, had not been previously authorized. The Snyder Act supplies the needed all-inclusive authorization by making all Indians the beneficiaries of all appropriations. Congress may limit the class of assistance recipients in an appropriation act; but if it does not do so, the BIA must assist "the Indians throughout the United States," i.e. all Indians.

No recent BIA appropriation, including that for fiscal 1968, has limited BIA general assistance to on-reservation Indians. Congress has imposed express geographic limitations, however, on other programs funded in the same acts and on previous BIA welfare appropriations. BIA testimony to Congress on the Bureau's

service population has not been consistent; and even if it had been, the legislative history does not evidence Congressional ratification of the BIA's position.

House and Senate committee reports do not support an on-reservation limit for BIA general assistance.

66 BIAM 3.1.4(A) which limits BIA general assistance to Indians on-reservation and in Alaska and Oklahoma is therefore void. It is not sanctioned by 25 U.S.C. \$\$2 and 9. Those laws do not authorize the BIA to assume substantive powers not granted by the Snyder and appropriation acts.

tional. It denies BIA general assistance to off-reservation Indians, except in Alaska and Oklahoma, even though the constitutional basis for discrimination in favor of Indians is that "the United States overcame the Indians and took possession of their lands, sometimes by force, leaving them uneducated, helpless and dependent people" (Board of County Commissioners v. Seber, 318 U.S. 705).

66 BIAM 3.1.4(A) arbitrarily establishes a conclusive presumption that all off-

reservation Indians (outside Alaska and Oklahoma) are not needy despite their actual need. Section 3.1.4(A) may be constitutional to the extent that it assumes the state's on-reservation welfare burden, but this case does not involve BIA assistance which is in lieu of state general assistance. If the Ruizes were to prevail, the BIA would continue providing reservation Indians with an amount of general assistance equal to what the state would otherwise have to provide. Only BIA general assistance appropriations in excess of substitute-for-state payments would be redistributed among on and offreservation Indians.

#### ARGUMENT

I

THE SNYDER ACT MAKES EVERY INDIAN ELIGIBLE FOR BIA PROGRAMS EXCEPT WHERE AN APPROPRIATION ACT LIMITS THE CLASS OF BENEFICIARIES

A general appropriation bill is out of order in the House of Representatives if it provides funds for anything not previously authorized except public works and "objects already in progress." (Rule XXI.2 of Rules of the House of Representatives in Deschler, Constitution,

Jefferson's Manual and Rules of the House of Representatives of the United States, Ninety-Second Congress, H.Doc.No. 439, 91st Cong., 2 Sess. (1971) (hereinafter cited as Deschler).) This was also true in 1921. (Deschler at 465.)

Prior to passage of the Snyder Act, 25 U.S.C. \$13, in 1921, no authorization law existed for most Bureau of Indian Affairs programs. (S.Rpt.No. 294, 67th Cong., 1st Sess. (1921).) As a result, unauthorized appropriations had to be struck out if any Congressman raised a point of order. (Remarks of Representative Kelly, 61 Cong. Rec. 4659-4660 (Aug. 4, 1921); Remarks of Representative Carter, 61 Cong. Rec. 4671-4672 (Aug. 4, 1921).)

The purpose of the Snyder Act was to immunize Indian appropriation bills from points of order based on lack of authorization. (H.Rpt.No. 275, 67th Cong., 1st Sess. (1921); S.Rpt.No. 294, 67th Cong., lst Sess. (1921); Remarks of Representative Kelly, 61 Cong. Rec. 4659 (Aug. 4, 1921).) The law effectuates that purpose by ennumerating a long list of authorized programs and requiring the Indian Bureau to

General assistance welfare is clearly [footnote continued on next page]

"direct, supervise, and expend...[appropriated funds]... for the benefit, care, and assistance of the Indians throughout the United States."

This does not require appropriations for all the ennumerated programs nor for all Indians. Congress is free to appropriate as much or as little as it sees fit for any program; and Congress may, consistent with its own rules, specify that no part of a particular appropriation shall go to recipients lacking certain qualifications (Deschler, supra, at 471; Rule XVI.2 of the Standing Rules of the Senate in Senate Manual, S.Doc.No. 92-1, 92d Cong.,

within the authorizations for "general support" and "relief of distress." The Court need not decide whether the act authorizes only those programs which the BIA had in 1921. Supporters of the legislation said it would authorize no new Bureau activities. (Remarks of Represenative Carter, 61 Cong. Rec. 4672 (Aug. 4, 1921); Remarks of Representative Snyder, 61 Cong. Rec. 4684 (Aug. 4, 1921); Remarks of Senator Curtis, 61 Cong. Rec. 6529 (Oct. 21, 1921).) However, the Senate report incorporates and adopts a letter from the Acting Secretary of the Interior, who wrote: "[T]he bill in question would give Congress authority to appropriate for the expenses of the Indian service for all necessary activities.... (S.Rpt.No. 294, 67th Cong., 1st Sess. (1921) (emphasis added).)

lst Sess. (1971)). The starting point, though, is that all appropriations are for the "assistance of the Indians throughout the United States."

To have designated less than all Indians as beneficiaries of all appropriations would have allowed a point of order to be raised whenever unincluded Indians were added by an appropriation act. Thus, as a matter of logic, the Snyder Act could accomplish its purpose only be making all Indians beneficiaries.

In any event, the language of 25 U.S.C. \$13 is clear beyond question. "[T]hroughout the United States" means "in or to every part of; everywhere in" the United States. (Random House Dictionary of the English Language 1480 (1967).) The Office of the Interior Department Solicitor wrote in 1971 that "Indians throughout the United States" means "any and all Indians, of whatever degree, whether or not members of federally recognized tribes, and without regard to residence so long as they are within the United States." (Memorandum from the Assistant Solicitor, Division of Indian Affairs, Department of the Interior to the Commissioner of Indian Affairs,

Dec. 9, 1971, reprinted in Sclar, Participation By Off-Reservation Indians In Programs Of The Bureau Of Indian Affairs And The Indian Health Service, 33 Mont.L.Rev. 191 (1972) (hereinafter cited as Sclar).) The statute's meaning is so plain that the Court need look at no additional materials to see if off-reservation Indians were included in the phrase "the Indians throughout the United States." (Ex Parte Collett, 337 U.S. 55, 61 (1949).)

The fact is, however, that off-reservation Indians had been receiving BIA services before the Snyder Act. (Commissioner of Indian Affairs, Report For The Year 1866 at 94 (1866); Commissioner of Indian Affairs, Report To The Secretary Of The Interior, 1908, at 17 (1909); see also Sclar, 33 Mont.L.Rev. 191, at 208, fn. 127.) The committee reports and debates on the Snyder Act did not discuss which Indians would be served under the new law, and no indication exists that Congress intended to cut off any then receiving assistance. The sweep of the act's language caused Congress no concern about service to urban Indians, because the number of urban Indians was then insignificant.3

Petitioner argues that the Snyder

Act vests the Secretary of the Interior
with discretion to affix tribal and
geographic eligibility requirements on top
of those set by Congress in enacting appropriations. (Brief For The Secretary at 8.)
That contention is untenable.

Appropriations acts from the period prior to 1921 bespeak Congressional determinations of whether certain tribes or classes of Indians or Indians generally would be assisted by a particular appropriation. The Interior Secretary may have had substantial discretion over Indian affairs, but Petitioner cites nothing

The total United States Indian population in 1920 was 244,437. United States Department of Commerce, Bureau of the Census, Fourteenth Census of the United States Taken in the Year 1920, Population, Vol. II at 37 (1922).) The Indian population in cities of 100,000 or more was 1,970 or .8 of one percent of the total Indian population. (Id. at 47.) The Indian population in cities of 25,000 or more, including those of 100,000 or more, was 4,086 or 1.7% of the Indian population. (Id. at 75-76.) And using the census definition of urban as towns of 2500 or more (id at 20), the percentage of "urban" Indians in 1920 was still only 6.2% (Id. at 89.)

showing that the Secretary had any power to modify the choices made by Congress.

The Snyder Act did not increase the Secretary's power. The act's sole purpose was to stop points of order to unauthorized appropriations. (Remarks of Representatives Andrews and Carter, 61 Cong. Rec. 4672 (Aug. 4, 1921).) Congress had no intention of surrendering control over which groups of Indians would share in appropriations; it was merely resolving a jurisdictional fight between the House's Indian Committee and that body's Appropriations Committee. (Remarks of Representative Carter, 61 Cong. Rec. 4671-4672 (Aug. 4, 1921).)

Since passage of the Snyder Act Congress has continued to indicate when an appropriation is only for one tribe or the Indians in certain areas. (See Part II, infra.) Petitioner's reading of the Snyder Act as vesting him with unbridled discretion would create what this Court has described as "a type of administrative absolutism not congenial to our lawmaking traditions." (Gutknecht v. United States, 396 U.S. 295, 306 (1970); see also Smith v. Director of Internal Revenue, 332 F.2d

671, 673 (9th Cir. 1964).) The correct interpretation of the Snyder Act is that Congress may, under its own rules, limit the class of beneficiaries during the appropriation process; but if Congress imposes no limit, the beneficiaries are "the Indians throughout the United States."

#### TI

NEITHER THE FISCAL 1968 INTERIOR
DEPARTMENT APPROPRIATION NOR
SUBSEQUENT APPROPRIATIONS LIMIT
BIA GENERAL ASSISTANCE TO ONRESERVATION INDIANS

A. The Lack Of A Geographic Limit
On Recent General Assistance Appropriations Contrasts Sharply With
Geographic Limits On Other Programs
In The Same Laws And On The General
Assistance Program In Prior BIA
Appropriations.

In fiscal year 1968, when this suit arose, the appropriation covering BIA general assistance provided: "For expenses necessary to provide education and welfare services for Indians...including...grants and other assistance to needy Indians... \$126,478,000." (81 Stat. 59, 60.) The appropriations for subsequent years are identical except for the dollar amounts.

<sup>4.</sup> In fiscal 1974 the fiscal 1968 appropriation is significant only as it illuminates the meaning of subsequent appropriations. [footnote continued next page]

(82 Stat. 425, 427; 83 Stat. 147, 148; 84 Stat. 669, 670; 85 Stat. 229, 230; 86 Stat. 508, 509.)

The acts contain only one limit on which "Indians throughout the United States" shall receive "assistance." That limit is "needy." The absence of any geographic limitation on assistance in those laws is in clear contrast to other programs in the same laws and to assistance provisions in prior BIA appropriations.

Each of the BIA general appropriation acts for fiscal years 1968 through 1973 provide reward money for information or evidence concerning violations of law "on Indian reservations and lands." (81 Stat. 59, 60; 82 Stat. 425, 428; 83 Stat. 147, 148; 84 Stat. 669, 670; 85 Stat. 229, 230; 86 Stat. 508, 509.) Each of those laws also appropriates funds for land acquisition with the proviso that "no part of the sum herein appropriated shall be used for the acquisition of land within the States of Arizona, California, Colorado, New Mexico, South Dakota, and Utah outside of the boundaries of existing Indian reservations except lands authorized

This brief accordingly uses subsequent acts and legislative history as aids in the process of interpreting BIA appropriation acts.

by law to be acquired for the Navajo Indian Irrigation Project." (81 Stat. 59, 61; 82 Stat. 425, 427; 83 Stat. 147, 149; 84 Stat. 669, 671; 85 Stat. 229, 231; 86 Stat. 508 510.)

In 1940 an emergency appropriation to the BIA provided \$1,700,000 for "relief and rural rehabilitation for needy Indians." (54 Stat. 611, 617 (emphasis added).) The next year the House Appropriations Committee adopted the same approach for the regular BIA appropriations bill. That bill would have appropriated \$1,000,000 "for general support and rural rehabilitation of needy Indians." (H.R. 4590,77 Cong., 1st Sess., version of April 30, 1941 (emphasis added).) Then the following discussion took place before the Senate Appropriations Committee:

PROGRAM OF INDIAN SERVICE WITH RESPECT TO NEEDY INDIANS

Senator McCarran...About 6 weeks ago I had this matter up in connection with the group of Indians at Yerington, or close to that point. As I recall, I was confronted with the reply that there was no money to meet the situation.

# REHABILITATION FUNDS NOT AVAILABLE FOR RELIEF IN URBAN AREAS

Mr. Collier [Commissioner of Indian Affairs]. There is no authorization.

Senator McCarran. No authority?
Mr. Collier. No. This is the
fund that would be used, but it is
not applicable to urban groups, so
that you would have to change the
language of this authorization in
order for us to reach them.

ADVISABILITY OF REHABILITATION WORK
AMONG INDIANS IN URBAN AREAS

Senator McCarran. Why should there not be something of that kind done?

Mr. Collier. We think that it

Mr. Collier. We think that it should be.

Senator McCarran. What is required; legislation?

Mr. Collier. It requires merely the change of the language in this particular appropriation.

Senator McCarran. Why don't we do it? Why should it not be done; because, really, after all, Mr. Commissioner, those are the Indians who should have the help. They are off

of the reservation and they are trying to make a living....

Mr. Collier. This is the appropriation which it would come out of.
This provides for "General Support and rural rehabilitation of needy Indians."
This committee could drop the word "rural."

Senator McCarran. If we dropped "rural"?

Mr. Collier. That is all that you would have to do, drop the word "rural."

Senator McCarran. Well, when they are living in little communities away out in the wilds, you might say, that is pretty nearly rural.

Senator Holman. Who interprets the meaning of "rural"? I think that a village is rural, is it not?

Mr. Collier. The Comptroller General interprets it and he always interprets pretty tightly. This committee has the remedy by dropping the word "rural."

Senator Holman. Would that be legislation? If it is not legislation, and it is in order, I would move that

Senator McCarran be authorized to present it on the floor.

#### LEGISLATIVE AUTHORITY FOR RELIEF WORK AMONG INDIANS

Senator Hayden. I think it would be well if you could place in the record legislative authority for the appropriation.

Mr. Greenwood [Finance Officer, BIA]. Legislative authority, Mr. Chairman, is in the Snyder Act of 1921, authorizing appropriations for the general support of Indians.

Senator Hayden. Then so far as legislative authority is concerned, we could appropriate anything for any Indians anywhere?

Mr. Greenwood. Yes, sir.

Senator Hayden. The word "rural"
is limiting you here?

Mr. Greenwood. That is correct; yes, sir.

Senator McCarran. Let me see if I get it clearly, from what I understand to be your idea, or at least the Comprtroller General's idea, "rural" means living out in the country away from a settled community? Mr. Greenwood. Yes, sir.

Senator McCarran. You will not find very many Indians following that line. As a rule they come into little centers. They live around the outskirts of little towns. Maybe they work out in the hayfields, or work out at one place or another, but they always live close together in some little town; that is, those not on a reservation. It does not seem to me that this money applies to Indian relief at all.

Senator Thomas. That would not apply in my State, Senator. We do not have those communities. They have their allotments along the creeks some place, and they do not live much around the towns.

Senator McCarran. We have a group of Indians in my State that live that way.... Those who do not stay on the reservations simply work for somebody else, but live in close to little towns.

So, it does not seem to me that under that ruling the Indians would ever get anything, and they are not getting very much. Some of them are living in hovels that are dangerous to themselves and everybody else. (Hearings on H.R. 4590 before a subcommittee of the Senate Committee on Appropriations, 77th Cong., 1st Sess., at 159-162 (1941).)

As a result, the Senate Appropriations
Committee voted the bill out with the
word "rural" recommended for deletion.
(S.Rpt.No. 366, 77th Cong., 1st Sess. at
3 (1941); H.R. 4590, 77th Cong., 1st Sess.,
version of June 2, 1941.) The senate
agreed to delete "rural" (87 Cong. Rec.
4671 (June 3, 1941)) and the law was
enacted without the "rural" restriction
(55 Stat. 303, 305).

Besides textual contrasts within and between BIA appropriation laws, this Court has another reason for declining to read unexpressed geographic limitations into BIA appropriations for general assistance. House of Representatives' practice requires a limitation to show on the face of an appropriation act (Deschler, supra, at 476, ¶2); and the presumption is that the Congress

follows its own rules (<u>United States v. Vulte</u>, 233 U.S. 509, 515 (1914)). Moreover, the Congressional practice makes extremely good sense. A law represents the will of the whole House and the whole Senate. Those bodies cannot intend to adopt secret limitations of which most if not all Senators and Representatives are unaware.

B. Congress Has Not Ratified The BIA's General Assistance Policy By Not Expressly Repudiating It.

Petitioner claims (at page 15 of his brief) that two unpassed bills evidence an unstated Congressional understanding of geographic limits on BIA general assistance appropriations. Those bills are H.R. 9621, 87th Cong., 2d Sess. and H.R. 6279, 88th Cong., 1st Sess. Those bills would have declared that all Indians—whether on or off reservation—in certain states were eligible for BIA services. The bills would also have reimbursed the states for 80% of the state share of catagorical aid to Indians under the Social Security Act.

H.R. 9621 and H.R. 6279 were referred to committee (see 108 Cong. Rec. 74 (Jan. 11, 1962); 109 Cong. Rec. 8544 (May 14, 1963)), where they died. The record does not show whether they failed to pass because Congress disapproved of one or both of the basic provisions or because Congress considered such laws unnecessary for off-reservation Indians to receive BIA services. No significance whatsoever may be attached to Congress' inaction on those bills. (United States v. Wise, 370 U.S. 405, 411 (1962); Order of Railway Conductors v. Swan, 329 U.S. 520, 529 (1947).)

Petitioner also contends that Congress has silently ratified a BIA policy of providing general assistance only to reservation Indians. (Brief For the Secretary at 13-15.) This supposed ratification is based on three factors: (1) 66 BIAM 3.1.4(A), (2) testimony presented at seven hearings between 1922 and 1960, and (3) a sentence in the Bureau's annual justification statement that BIA general assistance is for "needy Indians on reservations."

66 BIAM 3.1.4(A) instructs BIA employees to provide general assistance only to Indians on reservations and in Alaska and Oklahoma. Nothing cited by Petitioner indicates that Congress ever knew of 66 BIAM 3.1.4(A). O BIAM 1.2.A

requires the Bureau to publish in the Federal Register "directives which relate to the public, including...directives [which] inform the public of privileges and benefits available; eligibility qualifications, requirements, and procedures," but 66 BIAM 3.1.4(A) has never received such publication. The failure to publish 66 BIAM 3.1.4(A) in the Federal Register also violates 5 U.S.C. \$552(a)(1)(D&E). (Piercy v. Tarr, 343 F.Supp. 1120, 1128-29 (N.D.Cal. 1972).) The sanction for failing to publish the instruction is that:

"Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner...be adversely affected ...(5 U.S.C. §552(a)(1).)<sup>5</sup>

Not a scintilla of evidence indicates that the Ruizes had knowledge of 66 BIAM 3.1.4(A) at the time the fiscal 1968 appropriation was being considered. And the vast majority of off-reservation Indians have not known about 66 BIAM 3.1.4(A) at any time.

<sup>5.</sup> The same rules applied under the predecessors of 5 U.S.C. \$552(a)(1). (See 60 Stat. 237, \$3(a); 44 U.S.C. \$1507.)

Imputing knowledge of that instruction to Congress for the purpose of finding Congressional ratification would therefore be an adverse affect proscribed by 5 U.S.C. \$552. (Cf. Borak v. Biddle, 141 F.2d 278, 280 (D.C. Cir. 1944); Berends v. Butz, 357 F.Supp. 143 (Minn. 1973).)

The testimony relied on for ratification (Brief For The Secretary at 14-15) is inapposite. First, the testimony in question was given between 1922 and 1960, not during 1967 hearings on the fiscal 1968 appropriation. To impute testimony from one year not only into the testimony but also the legislation of another year flies in the face of <u>United States v. Vulte</u>, <u>supra</u>, 233 U.S. 509 at 514-515, which holds that a limitation in one year's appropriation act is presumed not to apply to appropriations in subsequent years.

Secondly, in three of the seven cited hearings the testimony does not show a denial of BIA general assistance to off-reservation Indians. Two instances, in fact, show just the opposite.

One cited set of hearings is on the fiscal 1942 appropriation bill. Those are the same hearings which are quoted extensively on pages 16 to 21 supra, and which

show clearly that Congress expected offreservation Indians to receive BIA general assistance. Petitioner points to a subsequently filed BIA statement found on pages 465-466 of those hearings. That statement reads in part:

In the event the committee considers it advisable to eliminate the word "rural" from the language of the item appropriating funds for "General support and rural rehabilitation of needy Indians," the Indian Service would be able to extend a limited amount of assistance to groups of Indians residing in urban communities.

In view of the small amount available and the fact that a far greater number of Indians reside in rural areas than in urban communities, it is believed that in no event should more than 10 percent, or \$50,000 be expended for rehabilitating Indians who are not using the land for their support.

The statement is fully consistent with general assistance to off-reservation Indians. Urban Indians would obviously

receive a small part of the money if a "far greater number of Indians reside[d] in rural areas." Moreover rural does not mean reservation. (Remarks of Senator Thomas, supra at page 20.)

A second portion of testimony relied on by Petitioner to find ratification of a no off-reservation policy is pages 483 and 492 of Hearings on H.R. 3838 before a subcommittee of the Senate Committee on Appropriations, 81st Cong., 1st Sess. (1949). On page 483 Senator Young says: "When they [Indians] do leave [the reservation] and then run short of funds and find that they are not eligible for relief, they quite naturally drift back to their home reservation." The relief referred to was not BIA general assistance but state and local general relief from which Indians were barred by residence requirements. That is made quite clear by the following BIA statement appearing at page 592 of the hearings:

"This supplemental request is...in order to permit adequate relief payments to needy Indians on reservations and temporary relief to those off the reservation until they meet local residence requirements..."

(Emphasis added.)

The third instance of cited testimony not supporting Petitioner's position is "Hearings [on the Interior Department Appropriation Bill, 1924], H.Committee on Appropriations, 67th Cong., 4th Sess. pp. 184-185 (1922)." Nothing on the cited pages deals with the subject of welfare services to off-reservation Indians. The BIA did testify on page 183 that "we expended a good part of that [BIA relief] appropriation in relieving distress of Indians on reservations." In 1922, however, a substantial majority of Indians lived on reservations.

The third and last cog on Petitioner's wheel of ratification is a sentence reading: "General assistance will be provided to needy Indians on reservations." The sentence has appeared for a number of years in the Bureau's appropriation justification statements (Brief For The Secre-

<sup>6.</sup> More recently the justification statement has also said: "The Federal Government has assumed responsibility for providing financial assistance and other social services to needy residents of reservation communities. (Hearings on Department of the Interior and Related Agencies Appropriations For 1973 before a subcommittee of the House Committee on Appropriations, 92 Cong., 2d Sess., Part 2 at 60 (1972); Hearings [footnote continued on next page]

tary at 13-14), where it is buried amidst scores of pages of tiny type.

Congressional ratification of that sentence or 66 BIAM 3.1.4(A) cannot be inferred from Congress' failure to repudiate the sentence or from Congress' appropriation to the Bureau of a lump sum for general assistance and other BIA programs. What this Court said in Ex Parte Endo, 323 U.S. 283 (1944), is applicable here:

"It is argued, to be sure, that there has been Congressional ratification of the detention of loyal evacuees under the leave regulations of the Authority through appropriation of sums for expenses of the Authority. It is pointed

on Department of the Interior and Related Agencies Appropriations For Fiscal Year 1973 before a subcommittee of the Senate Committee on Appropriations, 92d Cong. 2d Sess., Part 1 at 151 (1972) (Emphasis added).)

<sup>7.</sup> Petitioner does not make clear whether Congress is supposed to have ratified the sentence, which restricts general assistance to reservation Indians, or 66 BIAM, which restricts general assistance to Indians on reservations and in Alaska and Oklahoma. And see footnote 6, supra.

out that the regulations and procedures of the Authority were disclosed in reports to the Congress and in Congressional hearings. And it is shown that the leave program of the authority was mentioned both in the House and Senate Committee hearings on the 1944 Appropriation Act and on the floor of the House prior to passage of the 1944 Act. Congress may of course do by ratification what it might have authorized. And ratification may be effected through appropriation acts. But the appropriation must plainly show a purpose to bestow the precise authority which is claimed. We can hardly deduce such a purpose here where a lump appropriation was made for the overall program of the Authority and no sums were earmarked for the single phase of the total program which is here involved. Congress may support the effort to take care of these evacuees without ratifying every phase of the (Id. at 303, fn. 24 (citaprogram. tions omitted).)

See also, Greene v. McElroy, 360 U.S. 474,505

sentence; D. C. Federation of Civic Associations, Inc. v. Airis, 391 F.2d 478, 481-482 (D. C. Cir. 1948).)

C. The Legislative History Of Recent BIA Appropriations Does Not Support A Reservation Only Policy For BIA General Assistance.

Petitioner's selections from the legislative history give an incomplete picture of BIA testimony and totally omit the testimony of other witnesses, floor debate, and committee reports. Some of the relevant omissions are as follows.

The Bureau of Indian Affairs has testified at numerous appropriation hearings that its service population includes all Indians living on or near reservations.

<sup>8.</sup> The cases cited by Petitioner (at page 15 of his brief) in support of ratification are clearly distinguishable. Both involved authorization laws with an indefinite lifetime not one year appropriations. Moreover both involved the ratification of properly adopted regulations.

<sup>9.</sup> Hearings on Department of the Interior and Related Agencies Appropriations For Fiscal Year 1965 before a subcommittee of the Senate Committee on Appropriations, 88th Cong., 2d Sess, at 42 (1965); Hearings on Department of the Interior and Related Agencies Appropriations For Fiscal Year [footnote continued on next page]

In 1971 Congressman Donald Fraser submitted a long statement on urban Indians at the House hearings. The statement said in part:

"I've found that no congressional mandate specifically ties the BIA and the IHS to trust land and there is virtually no legislative history in this area. Assistant Secretary Loesch finally admitted last year that the hands off policy regarding urban Indians was based on informal

<sup>1968</sup> before a subcommittee of the Senate Committee on Appropriations, 90th Cong., 1st Sess., at 819 (1967); Hearings on Department of the Interior and Related Agencies Appropriations For 1969 before a subcommittee of the House Committee on Appropriations, 90th Cong., 2d Sess., Part 2 at 575 (1968); Hearings on Department of the Interior and Related Agencies Appropriations For Fiscal Year 1969 before a subcommittee of the Senate Committee on Appropriations, 90th Cong., 2d Sess., at 368 (1968); Hearings on Department of the Interior and Related Agencies Appropriations For Fiscal Year 1971 before a subcommittee of the Senate Committee on Appropriations, 91st Cong., 2d Sess., at 1939 (1970); Hearings on Department of the Interior and Related Agencies Appropriations For Fiscal Year 1972 before a subcommittee of the Senate Committee on Appropriations, 92d Cong., 1st Sess., at 751-752 (1971).

understandings with the Congressional appropriations committees.... I have finally come to realize that the Bureau's approach to urban Indians is based on certain policy assumptions that have not been articulated." (Hearings on Department of the Interior and Related Agencies Appropriations for 1972 before a subcommittee of the House Committee on Appropriations, 92d Cong., 1st Sess., Part 6 at 101 (1971).)

In reply Congresswoman Julia Butler Hansen, Chairwoman of the Interior appropriations subcommittee said:

"I notice in your statement you say,
'Assistant Secretary Loesch finally
admitted last year the 'hands off'
policy regarding urban Indians was
based on informal understandings with
the congressional appropriations
committees.' This is not true.
Assistant Secretary Loesch has
never reached any understanding in
that connection with this committee.
This was the first year that we discussed this problem in detail with
the BIA (Id. at 104.)

Congressman Fraser responded:

"My understanding is that there is nothing in the existing statutory language which would keep the BIA or the IHS from being concerned with the Indians who live off the reservation..." (Id. at 105.)

Mrs. Hansen's rejoinder was
"Our appropriation bill has never
carried a limitation on expenditures concerning Indians." (<u>Id</u>. at
107.)

(See also Testimony of Senator John Tunney, Hearings on Department of the Interior and Related Agencies Appropriations for Fiscal Year 1973 before a subcommittee of the Senate Committee on Appropriations, 92d Cong., 2d Sess., at 3415-3417, 3422, 3423, and 3429; Testimony of Grace Thorpe, id at 3774; Testimony of Lee Sklar [sic], id. at 3781-3782; Statement of Senator Alan Cranston, id. at 4236-4237.)

On June 27, 1973, Chairwoman Hansen addressed the House on behalf of the 1974 Interior Department Appropriation. She said: "The boundaries of this committee's responsibility...encompass...the welfare and education of approximately 600,000 American Indians in and adjacent to the

reservation world....". (119 Cong. Rec. H5490.)

Finally, the appropriations committees' reports do not support limiting BIA general assistance to reservation Indians. For fiscal years 1967 and 1968 the reports were as silent as the statutes. 10 For fiscal 1969, the House report (No. 1395, 90th Cong., 2d Sess. (1968)) suggested no limitation. The Senate report described the appropriation as being for "the 400,000 Indians under the jurisdiction of the Bureau of Indian Affairs." (S.Rpt.No. 1275, 90th Cong., 2d Sess. at 6 (1968).) Those 400,000 were the Indians and Alaska Natives whom the BIA characterized as "on or near reservations. " (Hearings on Department of the Interior and Related Agencies Appropriations For Fiscal Year 1969 before a subcommittee of the Senate Committee on Appropriations, 90th Cong., 2d Sess., at 368 (1968).) The conference report did not resolve the disparity between the

<sup>10.</sup> H.Rpt.No. 1405, 89th Cong., 2d Sess. (1966); S.Rpt.No. 1154, 89th Cong., 2d Sess. (1966); H.Rpt.No. 1538, 89th Cong., 2d Sess. (1966); H.Rpt.No. 206, 90th Cong., 1st Sess. (1967); S.Rpt.No. 233, 90th Cong., 1st Sess. (1967); H.Rpt.No. 343, 90th Cong., 1st Sess. (1967).

House and Senate reports. (H.Rpt.No. 1664, 90th Cong., 2d Sess. (1968).)

The committee reports recommended no limitation on BIA welfare for fiscal years 1970 and 1971. In 1971 the House report for fiscal 1972 said: "While the Bureau's primary responsibility is to assist Indians living on reservations, the Bureau can and should do more to assist Indians to adjust to gity living." (H.Rpt.No. 92-308, 92d Cong., 1st Sess, at 9.) The Senate report for the same year stated that the recommended appropriation was for "the 477,500 Indians under the jurisdiction of the Bureau of Indian Affairs living on or near reservations." (S.Rpt.No. 92-263, 92d Cong., 1st Sess., at 5 (1971).) The conference report attempted no reconciliation on this point. (H.Rpt.No. 92-386, 92d Cong., 1st Sess. (1971).)

The 1972 House report appeared to sanction for fiscal 1973 the Bureau policy of denying general assistance to

<sup>11.</sup> H.Rpt.No. 361, 91st Cong., 1st Sess. (1969); S.Rpt.No. 420, 91st Cong., 1st Sess. (1969); H.Rpt.No. 570, 91st Cong., 1st Sess. (1969); H.Rpt.No. 91-1095; 91st Cong., 2d Sess. (1970); S.Rpt. No. 91-985, 91st Cong., 2d Sess. (1970); H.Rpt.No. 91-1321, 91st Cong., 2d Sess. (1970).

urban Indians. 12 (H.Rpt. 92-1119, 92d Cong., 2d Sess., at 6-7.) The Senate Report for fiscal 1973 held to its 1972 view that the BIA appropriation is for Indians "on or near reservations." (S.Rpt.No. 92-921, 92d Cong., 2d Sess. at 6 (1972).) The Senate report also directed the Secretary of the Interior to "prepare a plan to assure Bureau of Indian Affairs type services to all Indians in the United States--rather than just those living 'on or near reservations.'" (Ibid.) The House and Senate reports were probably expressing the same intent in different language. The conference report is

<sup>12.</sup> The term urban as used by the committee means metropolitan centers rather than urban in the Census Bureau sense. House Committee Chairwoman Hansen considers 600,000 Indians to be non-urban. (See 119 Cong. Rec. H5490 (June 23, 1973).) The Census considers only 467,753 to be rural. (See Sclar, supra, 33 Mont.L.Rev. at 194, fn. 7 and 195, fn. 9; see also Hearings on Department of the Interior and Related Agencies Appropriations for Fiscal Year 1972 before a subcommittee of the Senate Committee on Appropriations, 92d Cong., 1st Sess., at 756 (1971); Testimony of James Hawkins, Director of Education Programs BIA, in Hearings on Department of the Interior and Related Agencies Appropriations For 1973 before a subcommittee of the House Committee on Appropriations, 92d Cong., 2d Sess., Part 2 at 75 (1972).)

silent. (H.Rpt.No. 92-1250, 92d Cong.,
2d Sess. (1972).)

For fiscal 1974 the House report returns to its fiscal 1967-1968 approach. It says nothing about which needy Indians shall receive BIA welfare. (H.Rpt.No. 93-322, 93d Cong., 1st Sess. (1973).)

Any assessment of the committee reports—and the debates and testimony—should bear in mind that the Interior Department appropriations acts are not ambiguous. Those laws contain geographic limits on some BIA programs but not on general assistance. The reports should therefore be irrelevant. (Ex Parte Collett, supra, 337 U.S. 55 at 61.) But if the reports are considered, each should be applied only to the appropriation it recommends; and not one report limits BIA general assistance to reservation Indians. 14

<sup>13.</sup> The Senate had not acted on the fiscal 1974 BIA appropriation at the time this brief was written.

<sup>14.</sup> If the Court for some reason considers the appropriations statutes ambiguous, it should then apply the rule that laws affecting Indians will be construed in the way most favorable to the Indians. (Squire v. Capoeman, 351 U.S. 1, 6-7 (1956); Alaska Pacific Fisheries v. United States, 248 U.S. 78, 89 (1918); Choate v. Trapp, 224 U.S. 665, 675 (1912).)

66 BIAM 3.1.4(A) IS INCONSISTENT WITH THE SNYDER ACT, UNAUTHORIZED BY APPROPRIATION STATUTES, AND THEREFORE VOID

The Snyder Act, by its terms, makes geography irrelevant to BIA general assistance except when an appropriation act imposes a residency restriction. (Part I, supra.) No recent general assistance appropriation contains any geographic limit; and even those committee reports which specify beneficiaries include Indians near to as well as on reservations. (Part II, supra.) Neither the Snyder and appropriation acts nor their legislative histories evince any Congressional intent to vest the BIA with discretion to impose geographic limitations.

66 BIAM 3.1.4(A), which limits BIA general assistance to Indians on reservations and in Alaska and Oklahoma, is out of harmony with that statutory scheme and therefore void. (Manhattan General Equipment Company v. Commissioner of Internal Revenue, 297 U.S. 129, 134 (1936); see also NLRB v. Brown, 380 U.S. 278, 291-292 (1965); Social Security Board v. Nierotko, 327 U.S. 358, 369 (1946).)

66 BIAM 3.1.4(A) is not sanctioned by 25 U.S.C. \$\$2 and 9. Sections 2 and 9 do not authorize the BIA to assume substantive powers not granted by the Snyder and appropriation acts. (Organized Village of Kake v. Egan, 369 U.S. 60, 63 (1962); Leecy v. United States, 190 Fed. 289, 292-293 (8th Cir. 1911).)

Petitioner contends that he must adopt eligibility rules for BIA general assistance. (Brief For The Secretary at 16.) Certainly that is true. The appropriation laws say that only "needy Indians" may share, and the Secretary thus has implied power to define need. The power to impose geographic criteria is withheld however. (Cf. Townsend v. Swank, 404 U.S. 282, 286 (1971).)

Petitioner further contends that he would have to "substantially diminish" general assistance to Indians on reservations if he must provide general assistance to off-reservation Indians. (Brief For The Secretary at 18.) That does not follow. The Ruizes do not challenge 66 BIAM 3.1.4(A) because it causes reservation Indians to receive BIA general assistance in amounts equal to what off-reservation Indians receive from state

programs. What respondents object to is that on-reservation Indians receive additional benefits which off-reservation Indians do not receive from the state. General assistance benefits to on-reservation Indians would not have to be "substantially diminish[ed]" if BIA maximum grant rules were to provide that on-reservation Indians would receive no more than the combined payments to off-reservation Indians by the BIA and state governments. 15

66 BIAM 3.1.4(A) is not entitled to deference as a consistent and longstanding administrative interpretation of BIA powers. As an interpretation of appropriation acts covering BIA general assistance, it is inconsistent with BIA regulations for other programs made pursuant to the same lump sum appropriation.

(25 C.F.R. \$\$31.1, 32.1.) Section 3.1.4

(A)'s inclusion of off-reservation

<sup>15.</sup> Petitioner also makes the related argument that "Congress had no intention of substantially increasing the scope of existing and proposed service" when it failed to appropriate all that the BIA requested for fiscal 1968. That contention erroneously assumes, among other things, that Congress appropriated general assistance funds in fiscal 1967 only for reservation Indians.

Indians in Alaska and Oklahoma is inconsistent with BIA statements to Congress that only reservation Indians receive general assistance; and 3.1.4(A)'s denial of general assistance to any offreservation Indians except in Alaska and Oklahoma is inconsistent with BIA testimony that the Bureau serves Indians on or near reservations. BIA treatment of off-reservation Navajos in the Navajo area as on-reservation (Hearings on Department of the Interior and Related Agencies Appropriations For Fiscal Year 1972 before a subcommittee of the Senate Committee on Appropriations, 92d Cong., 1st Sess. at 753 (especially the table of Estimated Indian Population) (1971)) is not consistent with 66 BIAM 3.1.4(A). The BIA has even carried out a program of down payments on urban Indian houses as part of the welfare program authorized by the Snyder Act. (See Sclar, supra, 33 Mont.L.Rev. 191 at 216.) Such an erratic performance is entitled to no deference, particularly as it is inconsistent with the intent of Congress. (Federal Maritime Commission v. Seatrain Lines, \_\_\_, U.S. , , 36 L.Ed. 2d 620, 634 (1973).)

Any doubts as to the validity of 66 BIAM 3.1.4(A) should be resolved against validity because of the section's doubtful constitutionality. (See Part IV, infra; Townsend v. Swank, supra, 404 U.S. 282 at 291.)

#### IV

66 BIAM 3.1.4(A) ARBITRARILY
EXCLUDES OFF-RESERVATION INDIANS
FROM BIA GENERAL ASSISTANCE IN
VIOLATION OF THE FIFTH AMENDMENT

In Board of County Commissioners v.

Seber, 318 U.S. 705 (1943), this Court
held constitutional a federal law which
exempted from state taxation certain offreservation, non-trust, individually
owned, Indian land. The source for that
unique power to discriminate in favor
of Indians was that "the United States
overcame the Indians and took possession
of their lands, sometimes by force,
leaving them an uneducated, helpless and
dependent people." (Id. at 715.)

Off-reservation Indians epitomize that plight. Whether rural or urban, a great many are poor; 16 and they are land-

<sup>16.</sup> Johnson, American Indians In Rural Poverty in Toward Economic Development For Native American Communities, A Compendium of Papers Submitted to the Subcommittee [footnote continued on next page]

less because of federal action. 17

Some off-reservation Indians, as in California, never received reservations. (Sclar, supra, 33 Mont.L.Rev. at 221-222.)

Nevada Indians have outgrown some tiny reservations established for them. (Remarks of Senator Bible, 117 Cong.Rec. S2409 (Mar. 4, 1971).) Substantial numbers of Indians have been displaced by the condemnation or involuntary sale of valuable reservation land. (Cahn, Our Brother's Keeper: The Indian In White America 69-73 (1969).) Many Indians are landless because

on Economy In Government of the Joint Economic Committee, Congress of the United States, 91st Cong., 1st Sess. (Comm. Print 1969) at Vol. I, p.19, 31-35; United States Department of Agriculture, Economic Research Service, Rural Indian Americans In Poverty (Agricultural Economic Report No. 167) at 11 (1969); President Nixon's Message To Congress On Indian Affairs of July 8, 1970, 6 Weekly Compilation of Presidential Documents 894 ("Three-fourths [of urban Indians] are living in poverty"); Testimony of Charles N. Zellers, Assistant Commissioner of Education, BIA, in Hearings on Department of the Interior and Related Agencies Appropriations For 1970 before a subcommittee of the House Committee on Appropriations, 91st Cong., 1st Sess., Pt. 2 at 93 (1969) .

<sup>17.</sup> Reservation Indians too are victims of the Government's land policy, because the reservation lands left to them, with a few exceptions, are inadequate to their needs.

of the Government's now discredited allotment program. (Id. at 73-75; Sclar, supra,
33 Mont.L.Rev. at 222.) The BIA considers
other thousands of Indians off-reservation
because, through accidents in the historical maturation of the United States, their
reservations developed special relationships with state governments. (See e.g.,
United States Department of the Interior,
Federal Indian Law 965-979 (1958).) And
finally, the BIA has encouraged, if it
has not actually coerced, several hundred
thousand Indians to move to urban areas.
That relocation was initiated because Congress believed both that more Indians were

Testimony of Milford M. Sanderson, President, American Indian Forum, Hearings on Department of the Interior and Related Agencies Appropriations For 1973 before a subcommittee of the House Committee on Appropriations, 92d Cong., 2d Sess., Pt. 5 at 488; Testimony of Congressman Donald Fraser, Hearings on Department of the Interior and Related Agencies Appropriations For 1972 before a subcommittee of the House Committee on Appropriations, 92d Cong., 1st Sess., pt. 6 at 100, 101, 104; Testimony of Senator Fred Harris, Hearings on Department of the Interior and Related Agencies Appropriations For Fiscal Year 1972 before a subcommittee of the Senate Committee on Appropriations, 92d Cong., 1st Sess., at 3074.

living on reservations than the land could support and that relocation to cities was the only practical solution for that situation. (S.Rpt.No. 2664, 84th Cong., 2d Sess. 2-3 (1956).)

Despite the Government displacement and the poverty it has engendered and despite those two factors being the constitutional basis for special benefits to Indians, 66 BIAM 3.1.4(A) totally excludes off-reservation Indians from BIA general assistance except in Alaska and Oklahoma.

Petitioner defends that rule as being reasonably related to factors which contribute to need. (Brief For The Secretary at 20-21.)<sup>19</sup> The record in this case, however, contains no evidence showing that off-reservation Indians have an economic advantage over on-reservation Indians. Not even the non-evidentiary authorities cited by Petitioner (at page 21, fn. 14 of his brief) attempt a comparison between the resources and employment opportunities of on and off-reservation residents.

<sup>19.</sup> The listed factors are remote places with inadequate resources, a lack of job opportunities, and chronic unemployment.

What 66 BIAM 3.1.4(A) really establishes is a conclusive presumption that all off-reservation Indians (outside Alaska and Oklahoma) have incomes and assets above the standards of need for BIA general assistance. The Ruiz' actual need (Statement Of The Case, supra, at 4) and the stated statutory purpose "to provide...assistance to needy Indians" are rendered irrelevant. 66 BIAM 3.1.4(A) operates just as arbitrarily as the total exclusion of tax dependents from food stamps which this Court declared in violation of the Fifth Amendment in United States Department of Agriculture v. Murry, U.S. \_\_\_, 41 U.S. Law Week 5099 (1973).

Equally invalid are the other rationales which petitioner advances in support of constitutionality for 66 BIAM 3.1.4(A).

"Off-reservation Indians have equal access [with non-Indians] to ordinary state and federal benefits" (Brief For The Secretary at 21), but on-reservation Indians are equally entitled to social security and state welfare (Acosta v. San Diego County, 272 P.2d 92 (Cal.App. 1954); State Board of Public Welfare v.

Board of Commissioners of Twain County, 137 S.E. 2d 801 (N.C. 1964); United States Department of the Interior, Federal Indian Law 540, fn.6 (1958); cf. Begay v. Sawtelle, 88 P.2d 999 (Ariz. 1939)). Petitioner himself recognizes the equal welfare rights of on-reservation Indians at pages 7 and 8 of his brief. That the United States may constitutionally assume states' on-reservation welfare responsibilities in recognition of the tax-exempt status of recipients' land and income is not disputed, 20 but this case does not involve that issue. The states would bear no extra burden if the Ruizes were to obtain BIA benefits which Arizona does not provide to off-reservation residents. The BIA would continue providing reservation Indians with an amount of general assistance equal to what the states would otherwise have to provide. Only the BIA general assistance appropriations in excess of the substitute-for-state payments would be redistributed among on and off-reservation Indians.

<sup>20.</sup> The United States has no obligation to assume the burden of state programs. (Board of County Commissioners v. Seber, supra, 318 U.S. 705 at 718; Acosta v. San Diego County, supra, 272 P.2d 92 at 98.

"Indians going beyond reservation boundaries have generally been held subject to non-discriminatory state law." (Brief For The Secretary at 20 quoting Mescalero Apache Tribe v. Jones U.S.

"[A]nd [on a reservation] the authority of the state is less." (Brief For The Secretary at 20.) The states general authority on and off-reservation has nothing to do with welfare, though, as explained in the preceding paragraph.

Making BIA general assistance available to off-reservation Indians would, according to Petitioner, "provide benefits to fully assimilated Indians not based on any special relationship with the government and denied to the citizenry at large." (Brief For The Secretary at 18.) Once again, the record contains nothing to show that off-reservation Indians are "fully assimilated." To the contrary, the record shows that the Ruizes and other off-reservation Papagos are not assimilated. (Statement Of The Case, supra; A.84-87; and see Sclar, supra, 33 Mont.L. Rev. 220 at footnotes 217-219 and the material cited therein.) The special

relationship which justifies providing special benefits to off as well as on-reservation Indians and not to non-Indians is that set out in <u>Seber</u>, <u>supra</u>:

"[T]he United States overcame the Indians and took possession of their lands, sometimes by force, leaving them an uneducated, helpless and dependent people."<sup>21</sup>

Petitioner suggests that he has a special trust responsibility to provide welfare for reservation Indians. (Brief For The Secretary at 20.) In fact, the United States has a duty to care for all Indians. (Goodrich, The Legal Status of The California Indian, 14 Calif.L.Rev. 157, 163 (1926); see also the authorities cited in Sclar, supra, 33 Mont.L.Rev. at 203, fn. 96.)

Another insubstantial argument by petitioner is his statement that: "Indians who live on reservations have submitted themselves to a different governmental structure...where the authority of the Secretary of the Interior is greater." (Brief For The Secretary at 20.) Criminal

<sup>21. 25</sup> U.S.C. \$13 is, of course, an exception to 42 U.S.C. \$2000d.

and civil jurisdiction are unrelated to the need for welfare; the Secretary's control over tribal trust property is the same whether a tribal member lives on or off-reservation; and the Secretary's control of individual trust property is similarly independent of residence.

Petitioner's final defense to the unconstitutionality of 66 BIAM 3.1.4(A) is that making BIA general assistance available to all Indians would "substantially diminish" the benefits available to reservation Indians who "depend more on the tribal government and the federal government." (Brief For The Secretary at 18, 20.) No such substantial diminution is likely. As explained at pages 40-41, the Ruizes and the class of off-reservation Indians they represent are seeking only the difference between what they receive from the state and what reservation Indians receive from the BIA. No reservation Indian would receive less than the state provides to off-reservation Indians. Beyond that, the cost in dollars to the federal government or in benefits to reservation Indians cannot justify the otherwise invidious exclusion of offreservation Indians from the BIA general

assistance program. (<u>Graham v. Richardson</u>, 403 U.S. 365, 374-375 (1971); <u>Shapiro v</u>. Thompson, 394 U.S. 618, 633 (1969).)

Viewed as a classification rather than as an irrebuttable presumption, 66 BIAM 3.1.4(A) is no more reasonable. No evidence in this case indicates reservation residence causes Indians to be poorer. No Indians could be more "helpless and dependent" because the United States "took possession of their lands" (Seber, supra) than those Indians whose land was actually taken or those who were forced to move off reservations after the Government left too little decent land to support all the members of their tribes.

Particularly inexplicable is why offreservation Indians in Alaska and Oklahoma are in the same class with reservation Indians while all other off-reservation
Indians are in another class. Petitioner's
principal justification seems to be that
Alaska and Oklahoma have historically
received special treatment. (Brief For
The Secretary at 21.) The BIA general
assistance program did not include offreservation Alaska Natives and Oklahoma
Indians until 1959, however. 22 And a

<sup>22.</sup> The 1952 [footnote continued on next page]

history of discriminating against offreservation Indians in most states is no justification for continuing that discrimination. (Brown v. Board of Education, 347 U.S. 483 (1954).)

Petitioner says that Alaska and Oklahoma have many Native Americans and few reservations, but he does not explain how those factors relate to need. California and North Carolina also have substantial Indian populations and little reservation land. Oklahoma Indian populations may be "concentrated" on tax-exempt trust land, as petitioner claims (Brief For The Secretary at 21); but, as explained on page 48, supra, a judgment for the Ruizes will impose no new burden on state welfare programs. The "substantial separate legislation" covering Alaska and Oklahoma, like the Interior Secretary's greater authority on than off reservation (see pages 50-51

version of 66 BIAM 3.1.4(A) read: "Assistance under the Bureau's program shall be limited to otherwise eligible Indians residing on reservations." (Indian Affairs Manual, Vol. VI, Part VI, Ch. 3, Section 301.03.) The 1952 provision was changed in 1959 to read: "Assistance under the Bureau's program is limited to otherwise eligible Indians residing on reservations and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma. (66 IAM 3.1.3.)

supra), does not make off-reservation
Alaska Natives and Oklahoma Indians needier
than their counterparts in other states.

"'Traditional' equal protection
analysis does not require that
every classification be drawn
with precise 'mathematical nicety.'

Dandridge v. Williams, supra, at
485. But the classification here
in issue is not only 'imprecise';
it is wholly without any rational
basis." United States Department
of Agriculture v. Moreno, U.S.
\_\_\_\_\_\_\_, 41 U.S. Law Week 5105,
5110 (1973).)

Moreover, 66 BIAM 3.1.4(A) should be judged not just by traditional equal protection analysis, but by a stricter standard. Whether Indians live on or off reservations has essentially been determined by the federal government. That is obvious where, as in California, a tribe or band never received any land. But it is no less true where, as in the Ruiz'case, the land left to the Indians was so meager or so unproductive that it could not support all its residents and some had to move off if either

those remaining or those departing were to have any chance for self-sufficiency.

For the federal government to then place Indians in a disadvantaged class for being off-reservation is "contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility." (New Jersey Welfare Rights Organization v. Cahill, U.S. \_\_\_, 36 L.Ed.2d 543, 545 (1973), quoting Weber v. Aetna Casualty & Ins. Co., 406 U.S. 164, 175, (1972); Frontiero v. Richardson, \_\_\_\_ U.S. \_\_\_\_, \_\_, 36 L.Ed. 2d 583, 591 (1973).) Therefore, the classification is "inherently suspect, and must...be subjected to strict judicial scrutiny." (Frontiero v. Richardson, supra, U.S. at 36 L.Ed. 2d 583 at 589-592.) Given that scrutiny, 66 BIAM 3.1.4(A) is plainly unconstitutional.

## CONCLUSION

For the foregoing reasons the Court of Appeals' decision should be affirmed. Dated: Aug. 3, 1973

Respectfully submitted, Lee J. Sclar Bruce R. Greene Herbert A. Becker

# CALIFORNIA INDIAN LEGAL SERVICES

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## Lee J. Sclar

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### IN THE

MICHAEL RODAK, JR., CI

## SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 72-1052

ROGERS C. B. MORTON, SECRETARY OF THE INTERIOR,

Petitioner

V

## RAMON RUIZ AND ANITA RUIZ

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

## BRIEF FOR THE RESPONDENTS

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#### BRIEF FOR THE RESPONDENTS

## **QUESTION PRESENTED**

Whether an unassimilated Papago Indian residing near the Papago Indian Reservation and within his tribe's aboriginal land may be automatically excluded from participation in the General Assistance Program of the Bureau of Indian Affairs on the sole ground that he does not reside within the legal boundary of the reservation.

# **STATEMENT**

While the respondents do not argue with the bare facts contained in the Secretary's Statement they would focus the attention of the Court upon certain background data which give meaning and perspective to those facts.

As reference to Appendix A, infra, will reveal respondents have remained in the central portion of the land to

which their tribe held aboriginal title which is called "Papagueria" or Land of the Papagos. They reside in a community known as "Indian Village" within the town of Ajo, Arizona. Indian Village (not the town of Ajo, as the Secretary states, Opening Brief 4-5) is populated almost entirely by Papago Indians. See: Fact 5, App. 45. The off reservation Papagos, including respondents, have not been assimilated into the dominent culture and they have retained their language and tribal identity. See: Exhibit A to Plaintiff's Cross-Motion for Summary Judgment (hereinafter refered to as the "Stucki Affidavit") at App. 84-88.

Economic conditions on the Papago Reservation are

among the worst in the United States:

The Papagos, whose arid and lonely territory borders Mexico, remain in the ranks of the most economically depressed of all American groups, although the possibility of mineral development now offers some hope. Scattered and only loosely related small villages, in an area of the state that has been slow to develop economically, has made community development all but impossible. Bennett, Problem and Prospects in Developing Indian Communities, 10 Ariz. L. Rev. 649 (1968)

As a result of the lack of economic opportunity on the reservation many Papagos are forced to seek employment in Anglo communities near the reservation, where they

again find their job opportunities limited:

On all reservations studied in the State of Arizona a clear pattern emerged: Indians are denied equal access to jobs and job promotion in all levels of private industry located on or near reservations and in bordertowns surrounding reservations. U.S. Commission on Civil Rights, The Southwest Indian Report (USGPO 1973)

In sum, respondents are economically deprived unassimilated Papago Indians, residing in an Indian community located in the central portion of the land that has always been occupied by their tribe.

#### SUMMARY OF ARGUMENT

While the Snyder Act was promulgated to insure continuity in the appropriations process it nonetheless constitutes the fundamental authority under which the BIA expends its funds. Since the language of the act is plain and mandatory the Secretary must follow it unless Congress has by later legislation clearly indicated its intent to modify the Snyder Act mandate. The various appropriations acts, including specifically the 1968 Act, contain no language indicating such an intent. Moreover, there is no basis upon which the Court can infer that intent since the presentations made to the Appropriations Committees have been unclear and contradictory. The internal agency instruction (66 IAM 3.1.4) itself cannot serve as a basis for that inference since it has not been made public in accordance with stated Bureau of Indian Affairs policies and procedures.

Even if the Court were to infer Congressional limitation through later legislation, the limitation as applied to respondents deprives them of equal protection of law and infringes upon their fundamental right to travel throughout their historic tribal territory.

## **ARGUMENT**

1.

THE SNYDER ACT CONSTITUTES THE FUNDA-MENTAL CONGRESSIONAL MANDATE TO THE SECRETARY OF THE INTERIOR IN REGARD TO INDIAN AFFAIRS AND THE SECRETARY HAS NO AUTHORITY TO VIOLATE THAT MANDATE UN-LESS CONGRESS HAS MODIFIED IT BY LATER LEGISLATION.

The Secretary stresses the fact that the primary objective of the Snyder Act was to resolve a jurisdictional battle in the House between the Indian Affairs subcommittee and the appropriations committee. The Secretary's conclusion that the statutory language is therefore meaningless is not justified, however, either in logic or in history. In addition to the procedural ends to which the Act was directed, it also constitutes the basic description by Congress of the duties and responsibilities of the Secretary of the Interior in the field of Indian Affairs. The choice of the mandatory language, "shall expend," and the expansive language, "throughout the United States," was no less intentional because the primary purpose was clarification. The Act thus stands as the basic mandate of Congress in regard to the duties of the Secretary and there is no authority vested in him to revise the statutory language by refusing to expend funds appropriated for specific Snyder Act programs. Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579. The plain language of the Act mandates expenditure of "such moneys as Congress may from time to time appropriate" and the relevant inquiry therefore is whether Congress has appropriated funds for the relief of distress of non-reservation Indians. If Congress has done so, the Snyder Act directs that the Secretary "shall . . . expend" such funds.

П.

THE LEGISLATIVE HISTORY OF THE 1968 AP-PROPRIATIONS ACT SHOWS THAT CONGRESS DID NOT INTEND TO MODIFY THE BASIC SNY-DER ACT RESPONSIBILITIES OF THE SECRE-TARY OF THE INTERIOR.

1. The Appropriations Act for the Department of the Interior and Related Agencies, 1968, PL 90-28, 81 Stat

59, provides certain monies, "For expenses necessary to provide education and welfare services for Indians...". There is no support in that language for a restriction of welfare or education benefits to reservation residents, and indeed the BIA extends educational benefits to Indians without regard to residency. See: 25 CFR §22.8. In the same paragraph, other monies are appropriated to deal with, "... violations of law on Indian reservations and lands." It is thus clear from the statutory language of the Appropriations Act itself that when Congress wished to restrict expenditures to the reservations it did so by specific language. The failure to so limit funds in the area of education and welfare can only be read as intentional.<sup>1</sup>

While the meaning of the appropriations act is plain on its face, resort to legislative history further supports the conclusion that Congress did not intend to limit the Secretary's Snyder Act duties.

2. The validity of the general rule against resort to such matters as committee hearings when statutory language is not ambiguous is amply justified by the confusion that is found in those hearings in this case. The question of services to off reservation Indians has been discussed on numerous occasions beginning in 1942. The 1942 hearings dealt specifically with the problems of urban Indians.<sup>2</sup> The Senate committee was told that the Secretary could not use funds for Indians in urban areas because the language of the appropriation act contained restrictive wording that limited expenditures to rural

That conclusion is furthered by reference to several other statutes in which Congress has demonstrated its full awareness of the distinction which the government now asks this Court to infer. See e.g. 25 U.S.C. § 479; 25 U.S.C. § 309.

<sup>&</sup>lt;sup>2</sup>Hearings, Senate Committee on Appropriations, Subcommittee on Department of the Interior and Related Agencies, on HR 4590 (Fiscal 1942) 77th Congress 1st Session, 1941, pp 160-162, 465, 6.

areas.3 The committee was assured that once that language was removed urban areas would be served.4 It is significant to note that the language was thereupon removed, presumably in response to these statements, and has not been included in any subsequent act. Thus there is evidence that beginning in 1942 Congress believed that it was appropriating funds that were not limited to reservation Indians.

As the Secretary has quite correctly pointed out, however, there have been times when his representatives have indicated the existence of the reservation limitation. In 1947 the Senate was flatly told that benefits are not available to off reservation groups.5 Again, in 1951, a similar limitation was expressed in response to a question from Senator Young. In regard to an Indian who leaves North Dakota and goes to the State of Washington, Mr. Meyer responded: %

"That presents a problem that is a matter of very basic policy. That is a matter of whether or not we are going to extend our services to Indians wherever they are and follow them around the United States as they leave the reservation with the type of service we are providing on the reservation. I think there are certain services that could be provided by the community, and someone should see to it that they get the services if it is possible to do so."6

<sup>&</sup>lt;sup>3</sup>However, as early as 1928 the Bureau was in fact providing services for non-reservation "urban" Indians. Hearings, Senate Committee on Indian Affairs, Subcommittee on Survey of Conditions of Indians of the United States, 71st Congress, 3rd Session, 1931, Arizona, Part 17, pp 8331-8343.

supra, note 2.

<sup>&</sup>lt;sup>5</sup> Hearings, Senate Committee on Appropriations, Subcommittee on Department of Interior and Related Agencies, HR 3123 (Fiscal 1948) 80th Congress 1st Session 1947, pg 598-599.

<sup>&</sup>lt;sup>6</sup>Hearings, Senate Committee on Appropriations, Subcommittee on Department of the Interior and Related Agencies, on HR 3790 (Fiscal 1952) 82nd Congress 1st Session 1951, pp 372-3.

There are two elements in that statement which should be noted: (1) the concern that the off reservation Indian be eligible for local benefits; and (2) the administrative difficulty involved in servicing non-reservation Indians. These themes continue in the following years and it is, therefore, important to emphasize that neither consideration is presented by the facts of this case. The respondents here are living in an Indian community more easily accessible to the Secretary's agents (in terms of both time and distance) than are many areas of the reservation itself. See: App.A, infra. Secondly, it is agreed that respondents were not eligible for any programs funded by state or local government.

In 1961 the picture became even more confused when Mr. Emmons announced to the House that the Secretary was beginning a program for the Turtle Mountain Reservation in North Dakota which would remove a substantial number of families to off reservation communities and provide welfare assistance for an indefinite period. Such a program belies any general residency requirement, and yet the formal written request for that year contains the same "needy Indians on reservations" language upon which the Secretary relies to support his argument. It is thus clear that neither the Secretary's representatives nor the appropriations committees regarded the language of the written request as controlling, and we must continue to look primarily to the oral presentations to the committees.

<sup>7</sup>Indeed, if they were they would not be eligible for BIA benefits. See: 66 IAM 3.1.4 B, App.58.

9id.

\*

<sup>&</sup>lt;sup>8</sup>Hearings, House Committee on Appropriations, Subcommittee on Department of the Interior and Related Agencies (Fiscal 1961) 86th Congress 2nd Session 1960, pp 508-10

Throughout the years of hearings in regard to Indian Appropriations one finds constant reference to the fact that the Bureau extends its services to non-reservation Indians notwithstanding the limited language of the formal appropriations request.

In 1961 Mr. Crow suggested that the relevant standard was whether or not an Indian was assimilated without

mentioning reservation status:

Services are, in general, limited to those arising out of our relationship regarding trust property and to those Indian people who reside on trust or restricted land. Funds are not included in these estimates for furnishing services to Indian people who have established themselves in the general society. 10

In 1962, Mr. Officer, in response to a question regarding the number of Indians who receive BIA services, told the House Committee:

MR. OFFICER. We are citing our figure of 380,000 to include those Indians who live in the reservation vicinity and are eligible to receive our services, as well as the Indians and other Alaska natives. The total of Alaska natives is 43,000. When we subtract that from 380,000, we have 337,000 Indians who live on or near reservations outside Alaska. Now if we are going to be concerned only with those who live on reservations, then we have that figure of 285,000, which was in our press release.

<sup>10/</sup>emphasis added), Hearings, House Committee on Appropriations, Subcommittee on Department of the Interior and Related Agencies (Fiscal 1962) 87th Congress 1st Session 1961, p. 98. See also, Hearings, Senate Committee on Appropriations, Subcommittee on Department of the Interior and Related Agencies, on HR 6345 (Fiscal 1962) 87th Congress, 1st Session 1961, p. 107.

MR. DENTON. What do you do in places like Oklahoma, where the Indians live "checkerboard"?

MR. OFFICER. It is for that reason that we cite figures of Indians living on or near reservations; because we have a number of situations similar to those in Oklahoma, where you don't have a well-defined reservation boundary. 11

In 1963, the House was told by Mr. Nash:

MR. NASH. First, with respect to the population, it is not true our population is declining. Our Federal service Indian population is increasing, very rapidly. The easiest way to dramatize this, I think, is to cite the fact that when all Indians were on reservations, and nobody was living off, back in the 1880's the census of 1880 showed about 225,000 Indians. More Indians than that living on the reservations were shown in the 1960 census. Close by the reservations we also have all kinds of responsibilities. We have Oklahoma, Alaska, and other places that do not have reservations.

We have a need for services for 380,000 people. This includes those who are living directly on the reservations, and those who are living very close, so that the way in which they live affects reservations programs. They move back and forth, et cetera. We call this our "Federal service to Indian population" and it is larger this year than last. It grows by decades and will grow very rapidly in the near future.

I wanted to be sure that that was in the record, sir. 12

<sup>11/</sup>emphasis added), Hearings, House Committee on Appropriations, Subcommittee on Department of the Interior and Related Agencies (Fiscal 1963) 87th Congress 2nd Session 1962 pp 352-4.

<sup>&</sup>lt;sup>12</sup>(emphasis added), Hearings, House Committee on Appropriations, Subcommittee on Department of the Interior and Related Agencies (Fiscal 1964) 88th Congress 1st Session 1963, pp 888-89.

Again the answer implies no absolute restriction to reservation Indians.

In 1964, Senator Bible asked the very question involved in this case:

SENATOR BIBLE. How many Indians do you have under your jurisdiction?

MR. NASH. 380,000

SENATOR BIBLE. How many nonreservation Indians do you have? Are those just reservation Indians?

MR. NASH. These are on or near. This would not include, for example, Indians living in Los Angeles, San Francisco, Chicago, Denver, Minneapolis, unless they were brought there as part of our vocational training or relocation programs.

SENATOR BIBLE. Following the Chairman's question, where does your jurisdiction rest in that regard? Do you have a measuring stick?

MR. NASH. No, sir. Our basis for providing services to an Indian is primarily on real estate. That is, we service those individuals who reside on trust or restricted land, or so close to it that the program of the reservation would be affected by services not performed for that person.

The figure of 380,000 Indians living "on or near" reservations was repeated in 1967 when Commissioner Bennett and Senator Bible engaged in the following colloquy:

<sup>&</sup>lt;sup>13</sup>(emphasis added), Hearings, Senate Committee on Appropriations, Subcommittee on Department of the Interior and Related Agencies, on HR 10433 (Fiscal 1965) 88th Congress 2nd Session 1964, pp 227-8.

#### INDIAN POPULATION

SENATOR BIBLE (presiding). Thank you Senator Bartlett.

Mr. Commissioner, and I am sorry because you may have covered this in earlier questioning, but what is the total Indian population under your jurisdiction at the present time?

MR. BENNETT. The total Indian population under our jurisdiction at the present time is 380,000. These are on or near reservations and comprise our service population based on the 1960 census.<sup>14</sup>

Again in 1968, the year in issue in this case, Commissioner Bennett filed a written statement that increased the service population by 20,000 and again described his "service population" in terms of the "on or near" restriction, as well as the degree of assimilation:

We are a modern service bureau, serving as many as 400,000 Indians and Alaska Natives who live on or near reservations—people who find themselves isolated from the mainstream of American life—existing in poverty.<sup>15</sup>

In the same year, Mr. Carmack told the Senate Committee that 9,000 "Indian" families receive general assistance from the BIA and 18,000 receive assistance from state programs. <sup>16</sup> But once again there was no dividing line based on the reservation and Mr. Carmack again invoked the "on or near" language:

<sup>15</sup>Hearings, Senate Committee on Appropriations, Subcommittee on Department of the Interior and Related Agencies, on HR 17354 (Fiscal 1969) 90th Congress 2nd Session 1968, p. 368.

16id, 710.

<sup>&</sup>lt;sup>14</sup>(emphasis added), Hearings, Senate Committee on Appropriations, Subcommittee on Department of the Interior and Related Agencies, on HR 9029 (Fiscal 1968) 90th Congress 1st Session 1967, p. 819.

Thus, it is reasonable, we feel, to assume that about a quarter or a third of the Indian families on or near Indian reservations receive some kind of help, and the remainder would be essentially self-supporting.<sup>17</sup>

Finally, in 1971, Commissioner Bruce was asked to clear up the confusion and specifically define the jurisdiction of the Bureau of Indian Affairs with particular reference to the lack of precision of the "on or near" language. He was unable to define "on or near", but did submit a written report in an attempt to clarify his responsibility. That report ambiguously provides, in part, as follows:

#### Services

Every Indian in the service area may not be receiving BIA services. He may not apply for them, or he may not meet conditions for certain services. For example, adult vocational training is limited to persons with one-fourth or more Indian blood, land services benefit owners and operators of trust land, and BIA welfare services are supplemented to local provisions of welfare. At the same time, Indian residents outside the service area may receive certain services. Examples are former residents in training away from the reservation under the adult vocational training program, owners of trust land who receive lease payments, and recipients of judgment awards. 18

Against that background of uncertainty the problem was fully aired in both the House and Senate in 1971.

Chairman Hansen stated to Congressman Fraser:

<sup>17</sup> id.

<sup>18</sup> Hearings, Senate Committee on Appropriations, Subcommittee on Department of the Interior and Related Agencies, on HR 9417 (Fiscal 1972) 92nd Congress 1st Session 1971, p. 753.

"I notice in your statement you say, 'Assistant Secretary Loesch finally admitted last year the "hands off" policy regarding urban Indians was based on informal understandings with the Congressional appropriations committees.' This is not true. Assistant Secretary Loesch has never reached any understanding in that connection with this committee."

At later point Chairman Hansen noted:

Our appropriation bill has never carried a limitation on expenditures concerning Indians."20

The Senate proceedings that year were even more specific because Senator Bible vigorously attacked the obvious confusion over the meaning of the term "on or near." In an incredible colloquy with Commissioner Bruce, the Senator was moved to exclaim:

If I were to become the Commissioner of Indian Affairs, God forbid, how would I know who I had jurisdiction over?<sup>21</sup>

The answer was not forthcoming as a reading of the full discussion will indicate.<sup>22</sup> The reason for the inability of the Secretary to articulate a clear standard stems from the fact that in reality there is no standard. As the Court of Appeals concluded:

"By 1966 the Bureau was providing full welfare benefits for certain off-reservation groups, denying

22id, 751-753 and see, Pet.Cert.App.A., pp 27-28 note 24.

<sup>&</sup>lt;sup>19</sup>Hearings, House Committee on Appropriations, Subcommittee on Department of the Interior and Related Agencies (Fiscal 1972) 92nd Congress 1st Session 1971, Part 6, p. 104.

<sup>&</sup>lt;sup>21</sup>Hearings, Senate Committee on Appropriations, Subcommittee on Department of the Interior and Related Agencies, HR 9417, (Fiscal 1972) 92nd Congress, 1st Session, 1971, p. 751.

benefits entirely to other groups and considering the provision of limited general assistance to still other groups."<sup>23</sup>

There are at least three categories of off-reservation Indians outside of Oklahoma and Alaska who are in fact treated or have been treated as eligible for general assistance, notwithstanding the language of the regulation.

The first of these categories is the relocated Indian who is eligible for general assistance regardless of who he is, where he comes from, or where he resides provided only that he be sent there by the Secretary.<sup>24</sup>

The second of these categories are Indians from the Turtle Mountain reservation in North Dakota who seem to have the absolute right to live wherever they wish.<sup>25</sup> Although the proposition is far from clear, the Secretary appears to be willing to undertake the burden of following them wherever they go in the United States.<sup>26</sup>

The third category are those Indians residing in Rapid City, South Dakota. It is not clear exactly what benefits this category of off-reservation Indians are entitled to, but it is clear that they can get some assistance if necessary.<sup>27</sup>

<sup>23</sup>id., 26-27.

<sup>&</sup>lt;sup>24</sup>Hearings, Senate Committee on Appropriations, Subcommittee on Department of the Interior and Related Agencies, on HR 10746 (Fiscal 1959) 85th Congress 2nd Session 1958, p. 293, and see, Pet.Cert.App.A. p. 23, note 17.

<sup>&</sup>lt;sup>25</sup> Hearings, House Committee on Appropriations, Subcommittee on Department of the Interior and Related Agencies (Fiscal 1961) 86th Congress 2nd Session 1960, pp 508-10.

<sup>26</sup>id.

<sup>&</sup>lt;sup>27</sup>Hearings, Senate Committee on Appropriations, Subcommittee on Department of the Interior and Related Agencies on HR 14215 (Fiscal 1967) 89th Congress 2nd Session 1966, pp 298, 300-302.

It is difficult, at best, to conclude, that Congress legislated in the light of the "clear practice" of the Secretary. It is even more difficult to assume, as the Secretary would have this Court now do, that the "clear practice" was incorporated sub silento as a limitation upon the plain language of the appropriations act and, therefore, the even plainer language of the Snyder Act.

3. The government's final argument is based upon the fact that an internal agency instruction (66 BIAM §3.1.4 A) regarding the limitation has been contained in the Bureau of Indian Affairs Manual since 1952. Accordingly, the Secretary argues, "Congress legislated in the light of the clear provision in the Department's manual limiting welfare payments to reservation Indians." Pet.Cert. 14. Aside from the fact that the Secretary's interpretation of the challenged provision has been anything but clear and consistant, it should be noted that under the procedures established in the IAM itself only policies and procedures which "do not relate to the public" are contained in the Manual. O BIAM 1.2: App. 100. Matters which "relate to the public" including eligibility standards are to be published in the Federal Register and codified in the Code of Federal Regulations. Obviously, the Secretary considers the instruction to be a purely internal matter that does "not relate to the public" and about which the public does not need to be informed. In light of that fact, it is impossible to assume that the duly constituted representative of the public, the Congress, was aware of the challenged regulation.

In conclusion, Respondents believe that when the plain words of the relevant statutes are read against the background of legislative history that the Secretary's position is without foundation. Over the course of years this Court has construed remedial statutes in a liberal

fashion and has articulated a particular standard of statutory construction applicable to cases such as the one at bar:

Doubtful expressions are to be resolved in favor of the weak and defenseless people who are wards of the nation, dependent upon its protection with good faith. Squire v. Capoeman, 351 U.S. 1, 6-7

Respondents submit that the Court of Appeals correctly applied that standard in concluding that the challenged instruction was not authorized by the applicable statutes. The burden is thus upon the Secretary to show that Congress has amended the plain language of the statutes by later legislation. He has not and, we submit, cannot do so.

#### Ш.

THE REGULATION AS APPLIED TO RESPOND-ENTS IS IN CONFLICT WITH EQUAL PROTECTION OF LAWS STANDARDS INCORPORATED INTO THE FIFTH AMENDMENT AND PENALIZES RESPONDENTS FOR EXERCISING THEIR FUNDAMENTAL RIGHT TO TRAVEL WITHOUT NECESSARY JUSTIFICATION.

A recent BIA publication succinctly describes the allocation of responsibility for economic assistance to American Indians:

# Social Services

The major participation by the States in this function was precipitated by the passage of the Social Security Act in 1935.

The categorical aid programs under Social Security (Old Age Assistance, Aid to Blind, Aid to

Families with Dependent Children, and Aid to Premanently and Totally Disabled) are administered through the States for all of their citizens including their Indian citizens both on and off Federal reservations. Over 81,000 (17 percent of the reservation total of 488,083) Indians living on reservations as of June 1971 were receiving categorical aid assistance.

Many Indian families are in need of assistance who do not qualify for one of the categorical aids. Assistance provided to this group by the BIA is called General Assistance. States and localities also provide general assistance to needy persons not eligible for the categorical aids. (Emphasis added) Taylor, The States and Their Indian Citizens, pg. 31 (United States Department of the Interior, Bureau of Indian Affairs, USGPO 1972)

It can thus be seen that the BIA General Assistance Program is supplementary to the Social Security Act and other programs carried out by the states. It is obviously designed to provide emergency<sup>28</sup> aid to a group of citizens who occupy a unique status in American society by virtue of their economic isolation, history, culture and degree of assimilation into the dominent society.

Thus, while the federal government has in effect said to the states "your responsibility does not end at the reservation boundary," see: Arizona v. Hobby, 221 F.2d 498 (1954); Acosta v. San Diego County, 126 Cal. App.2d 455, 272 P.2d 92 (1954); c.f., 42 USC §1352(b), the Secretary has whispered "but mine does." For a

<sup>&</sup>lt;sup>28</sup>It is particularly important to note that BIA General Assistance is only available when all other forms of state and local relief are unavailable. (See 66 IAM 3.4.B, App.58)

number of reasons respondents believe the Secretary's action is unconstitutional as applied to them.

1. The Secretary's instruction (66 IAM 3.4.1) creates two classes of indigent Indians in regard to general assistance programs administered under the Snyder Act. The first and favored class is composed of (a) reservation and non-reservation Indians in Alaska and Oklahoma; and (b) reservation Indians in other states. The second and disfavored class is composed of non-reservation Indians in all states except Alaska and Oklahoma. Thus, non-reservation Indians in Arizona are not entitled to receive BIA General Assistance while a non-reservation Indian in Oklahoma is entitled to receive such assistance.

The Secretary offers three justifications for the obvious discrimination against non-reservation Indians such as respondents:

"Much of Oklahoma was once set aside as an Indian territory, and though most of the reservations have been abolished, there remains a large area of concentrated Indian population with tribal organization, living on land held in trust by the United States." Opening brief p 21.

In regard to each of those assertedly distinguishing characteristics Arizona is nearly identical. (1) A recent BIA publication shows that Arizona and Oklahoma have nearly the same Indian population. (Arizona 95,812 - Oklahoma 97,731) And indeed in terms of percentage of total population Arizona (5.41%) has a greater concentration of Indians than Oklahoma (3.82%). See Taylor, The States and Their Indian Citizens, Appendix B, pages 176-177 (United States Department of the Interior, Bureau of Indian Affairs, Washington, D.C. 1972). The same study shows that Arizona has a far greater total of trust land (19,623,265.01 acres) than does Oklahoma (1,395,977.29 acres) which accordingly reduces the tax

base and affects the ability of state and local governments to fund social programs.<sup>29</sup> In terms of the historic ownership of the land the two states are again similar. Indeed, the respondent in the case at bar resides on land that the Indian Claims Commission has recently described as illegally taken from the Papago tribe (See, Ştatement, supra; App.A., infra).

In sum, the Arizona and Oklahoma situations are the same by any relevant measure and yet the Secretary provides General Assistance benefits to Oklahoma Indians without regard to their place of residence. Even if the Secretary were to limit benefits to Indians residing on land that was historically theirs (e.g. the Oklahoma reservations abolished after the Civil War) the respondents' status as unassimilated Indians living on land to which their tribe had aboriginal title should by equal measure entitle them to benefits. In short, there is no rational basis upon which respondents in the case at bar can be distinguished from those Indians in Oklahoma to whom benefits are paid.

The BIA undertakes to provide necessary assistance and social services for Indians on reservations when such assistance and services are not available through State or local public welfare agencies.

<sup>&</sup>lt;sup>29</sup>While the Secretary has not argued in the case at bar that the tax-exempt status of Indian land is relevant, the BIA itself has invoked the presence of tax exempt land as the foundation for its social service program. See: Taylor, supra, pp 31-32:

It is the general position of the Bureau that insofar as possible Indians should have the same relationship to public welfare agencies as non-Indians, and that public welfare agencies should have the same responsibility for providing services and assistance as they have for non-Indians in similar circumstances. It is recognized, however, that there are certain services required by some Indians which are not provided by the State and local welfare agencies, and the tax-exempt status of Indian lands may affect the ability of some States or local governments to meet the needs of Indians, particularly if Indians constitute a considerable portion of their population.

The Secretary argues, however, that the decision of this Court in Dandridge v. Williams, 397 U.S. 471, supports his attempt to exclude an entire class of eligible recipients. (Opening Brief 21-22). Dandridge and the cases that followed it (Jefferson v. Hackney, 406 U.S. 535; Richardson v. Belcher, 404 U.S. 78) deal with a quite different situation. In Dandridge the challenge was directed to the manner in which available funds had been apportioned among different classes of entitled persons. In the case at bar, the challenge is directed to the decision to totally exclude one class of persons who differ from the entitled class in only the most superficial ways.

Finally, the Secretary argues that the reservation limitation serves the demands of federalism by shifting to the states the burden of caring for indigent Indians. (Opening Brief 20) He thus suggests that "on reservations ... the authority of the Secretary of the Interior is greater and the authority of the states is less" and offers the suggestion as a basis for distinction in the case at bar. In public assistance programs administered by the states. however, all eligible persons within the jurisdiction, including reservation Indians, must be included in the recipient population (Arizona v. Hobby, 221 F.2d 498 (1954)), a fact that is hardly consistent with the assertion that on reservations the "authority of the States is less." As for the assertion that on reservations the "authority of the Secretary of the Interior is greater" we need refer only to the concession of the Secretary in this case that his jurisdiction does extend beyond the reservation boundary (Opening Brief 20) and to the numerous instances in which that jurisdiction has been and is today exercised. (See, Argument II(2), supra; Pet.App.A. 23-28, notes 13-23).

If the Court concludes that the "special history" of Alaska and Oklahoma warrants classification of Indians in those states as "reservation Imdians" the resulting discrimination against non-reservation Indians such as respondents remains. The respondents differ from reservation members of the Papago Tribe in only one way: the fact that they reside 15 miles outside the boundary of their reservation. By every other test they must be considered unassimilated Indians.

The only possible justification for their exclusion from benefits accorded their fellow Indians is administrative economy and ease. But as the decisions of this Court make plain, those considerations, standing alone, cannot justify the discrimination when the government has available to it less restrictive alternative means which can achieve the same administrative needs. See: Oyama v. California, 332 U.S. 633, 646-647; Harman v. Forssenius, 380 U.S. 528, 542-543; Carrington v. Rash, 380 U.S. 89, 96. As this Court noted im Shapiro v. Thompson, 394 U.S. 618:

We recognize that a State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens. It could not, for example, reduce expenditures for education by barring indigent children from its schools. Similarly, in the cases before us, appellants must do more than show that denying welfare benefits to new residents saves money. The saving of welfare costs cannot be an independent ground for an invidious classification (emphasis added) 394 U.S. at 633

Even if this Court were to conclude that discrimination between reservation and non-reservation Indians is rational and constitutional under the traditional equal protection doctrine, respondents respectfully suggest that the discrimination should be measured under the stricter standard applicable to classifications which affect fundamental rights. In Shapiro v. Thompson, 394 U.S. 618, this Court concluded that durational residency requirements for public assistance imposed an impermissible burden upon the exercise of the fundamental right to freedom of movement. Precisely the same burden is present in the case at bar. As was noted above, respondents reside in an Indian community that is located within the boundaries of the Papago Tribe's aboriginal land. From their point of viewe as well as that of other unassimilated Indians, they have remained at home. (See: Stucki Affidavit, App.84) But because of a boundary line imposed upon them by Executive Order their freedom to move throughout their homeland may be burdened by the loss of substantial governmental benefits. As Dunn v. Blumstein, 405 U.S. 330, makes clear, such burdens are unconstitutional, even if rationally based, if the government has available less drastic means of achieving its legitimate objectives. See, also, Shapiro v. Thompson, supra.

Respondents concede, as they have since the outset of this litigation, that the government has a legitimate interest in restricting its limited subsistence funds to the unassimilated Indian. But as we have pointed out, the reservation status of an Indian bears no necessary relationship to degree of assimilation. There are undoubtedly some Indians who reside on reservations who by language, culture and economic status must be deemed to have been assimilated into the larger culture. At the same time, there are many Indians, such as the respondents in the case at bar, who have retained their language, culture and economically dependent status notwithstanding their marginal participation in non-reservation society. As the eligibility standard for Public Health Service benefits (42)

CFR 36.12) demonstrates, workable functional distinctions between the two groups do exist thus creating less drastic means by which the government's legitimate interests can be effectuated. We have never argued that the government is required to provide subsistence benefits to the fully assimilated Indian residing in Manhattan. We have argued and continue to assert that the government's apparent belief that all non-reservation Indians are assimilated is illogical and unconstitutional.

4. Finally, respondents submit that this case must in any event be judged by the strict scrutiny test because one of the avowed purposes of the regulation is to inhibit movement of reservation Indians. There is every reason to believe that the restriction on travel is not only the result, but the purpose of this regulation. The Secretary's representatives have on several occasions suggested to the Congress that one purpose of the regulatory scheme is to keep poor Indians out of areas like Gallup, New Mexico and Rapid City, South Dakota, where they might go if given a choice, and encourage them to go to Los Angeles or Chicago where they can be more readily absorbed by the communities:

Mr. Emmons. I can appreciate, of course, what the Senator is referring to because I happen to come from such an area; an area that has quite a few Indians surrounding it. I can see the problem that could be generated if we did assist an Indian who moved into one of these communities just off the reservation, because, if they were getting relief from the Bureau of Indian Affairs, it would probably be an inducement for maybe thousands of Indians to move into a little community like Gallup, Senator. Now we could have an influx of maybe 10,000 or 15,000 Navajos into that little community which has probably a maximum population of 14,000

people. That would create a social problem because if these Indians were getting relief from the Bureau they would probably move in there and squat on private lands, using cracker boxes for residences; so it could probably create quite a problem.

Now, what we are trying to do in our current programs is to prepare these Indians, give them the required amount of education and training, so that these communities would not be confronted with this terrific impact of welfare Indians.

# Do you see what I mean? 30

Although the desire on the part of the Secretary to protect small inland cities from an influx of indigent Indians is understandable, it is wholly inconsistent with his trustee duty to the Indians. And although it is equally understandable that he might want to keep some Indians on the reservation until he can find a suitable home for them, the Secretary may not constitutionally do so. The purpose of excluding indigents from travel to protect the fiscal status of the destination community is no less impermissable because the impact of the burden falls at the inception of the movement instead of its conclusion. Even if the motive be pure, even if the Court ignores the intent to protect the community of destination, and assumes the highest motive of insuring that the migrating Indian will arrive in a destination offering the best

<sup>&</sup>lt;sup>30</sup>Hearings, Senate Committee on Appropriations, Subcommittee on Department of the Interior and Related Agencies, on HR 10746 (Fiscal 1959) 85th Congress 2nd Session 1958 p. 293; and see, Hearings, Senate Committee on Appropriations, Subcommittee on Department of the Interior and Related Agencies, on HR 5915 (Fiscal 1960) 86th Congress 1st Session 1959, pp 337-340.

possible economic opportunity, the intentional burden upon the exercise of the fundamental right of movement remains. Under those circumstances the strict scrutiny test articulated in *Shapiro* and *Dunn* is fully and appropriately applicable.

#### CONCLUSION

Respondents respectfully request that the decision and order of the United States Court of Appeals for the Ninth Circuit be affirmed.

Respectfully submitted.

Winton D. Woods Jr.

Lindsay E. Brew

Counsel for Respondents

#### APPENDIX A

In Papago Tribe of Arizona v. The United States of America, 19 Ind. Cl. Comm. 394 (1968), the Commission found as follows:

25. Boundaries of the Papago Land. The Commission finds that at the date of American accession in 1854 and subsequently until taken from the Papago Tribe of Arizona exclusively occupied and used in Indian fashion, and hence had aboriginal title to the tract bounded and described as follows:

Commencing at a point on the International Boundary in the Tinaias Altas Mountains which divides the eastern and western drainage of those mountains (T13S R17W Gila and Salt River Meridian); thence northwest on a line down the crest of the Tinaias and Gila Mountains to the 3141 foot peak on the border of the Yuma land as found in Docket No. 319; thence east to the Mohawk Mountains peak of 2900 feet in T10S R13 Gila and Salt River Meridian; thence northwest along the crest of the Mohawk Mountains to Mohawk Pass; thence east to the present town of Gila Bend; thence east southeast on a line through Lost Horse Tank to the peak of Table Top Mountains in T8S R2E, thence east to the northwest corner of the Papago Indian Reservation in R3E; thence east along the northern border of that reservation to its northwest corner in T7S; thence on a line east southeasterly to Picacho Peak and to Red Rock, Arizona; thence east to the peak of Oracle; thence in a southerly direction on a line following the ridge dividing the waters which flow into the San Pedro River from the waters which flow into the Santa Cruz River

to the International Boundary Line; thence west and northwest along the International Boundary Line to the point of beginning.

The following areas are excluded to the extent not taken by the defendant:

- a. The San Xavier del Bac Reservation
- b. The Papago Indian Reservation as enlarged by the post-1917 additions enumerated in Finding No. 24.
- c. Confirmed Spanish and Mexican land grants.

The Papago Tribe of Arizona v. The United States of America, No. 345, 19 Ind. Cl. Comm. 394 at 422 (1968)

In describing the history of that land, the Commission stated:

The subject tract was under Spanish dominion from the early 16th Century until Mexico succeeded to it in 1821. Mexican sovereignty lasted until the Gadsden Purchase in 1854, when the Mexican Government ceded lands including the subject tract to the United States. Due to the constantly expanding non-Indian settlement within the subject tract after 1854, the United States Government decided to concentrate the Papago Tribe within a reservation. Two former attempts to locate all the Papagos on a reservation had failed-the San Xavier Reservation, in 1874; and the Gila Bend Reservation in 1882. Finally, a generally satisfactory solution, at least to the United States, was arrived at, and the present Papago Indian Reservation was established on February 1, 1917. Thereafter, adjustments and additions were effected and the Papago Indian Reservation emerged in its present form. The Papago Tribe of Arizona v. United States of America, supra at 425.

The Commission then geographically described the Papago Land ("Papagueria") as follows:

For convenience, we shall discuss the Papago claim of aboriginal title to the area in the terms of three zones; Western, Central and Eastern. The Western Zone extends from the areas of Yuma occupancy along the Colorado River to the west to the Growler Mountains on the east, between the Gila River and the International Boundary. The Central Zone includes the land between the Growler and Baboquivari Mountains, from the boundary north to the line of Pima occupancy. The Eastern Zone includes the Altar and Santa Cruz River Valleys, from the boundary north to beyond Tucson.

It is not contested that the Central Zone has been occupied and used by the Papago since time immemorial. Much of their population has been centered here, and most of the area has been incorporated into the Papago Indian Reservation of today. (emphasis added) The Papago Tribe of Arizona v. The United States of America, supra at 426.

The metes and bounds description of "Papagueria" as well as the more general description of the three areas defined by the Indian Claims Commission may be followed on the United States Geological Survey Arizona Base Map (Interior—Geologic Survey, Washington, D.C., 1959—NS, MR 7484). The latter description may also be followed on any standard highway map.

Respondent respectfully requests that the Court take judicial notice of boundary of "Papagueria" as described by the Indian Claims Commission. See, e.g., Proposed Federal Rules of Evidence (1972), Rules 201 (b) (1), 201 (b) (2). While the metes and bounds description of

"Papagueria" was before the trial court, see, App.75-76, no map was included in the record since the geographic features of the area were "generally known within the territorial jurisdiction of the trial court." Proposed Federal Rules of Evidence (1972), Rule 201 (b) (1).

Supreme Court, U. S. F I L E D

AUG 29 1973

IN THE SUPREME COURT OF THE UNITED

TACTORS, RODAK, JR., CLERK

OCTOBER TERM, 1973

No. 72-1052

ROGERS C.B. MORTON, SECRETARY OF THE INTERIOR,

PETITIONER

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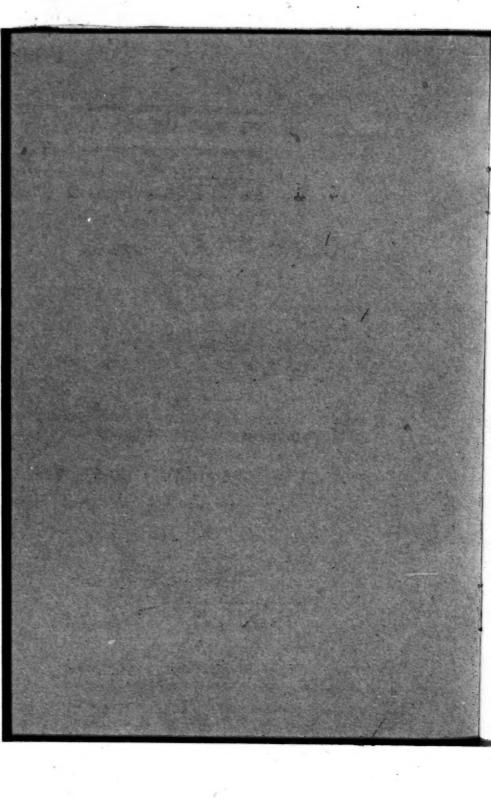
RAMON RUIZ AND ANITA RUIZ,
RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MOTION FOR LEAVE TO PRESENT ORAL ARGUMENT

Lee J. Sclar
Bruce R. Greene
Herbert A. Becker
CALIFORNIA INDIAN LEGAL
SERVICES
2527 Dwight Way
Berkeley, California 94704

Amicus Curiae In Support of Respondents



To The Honorable Supreme Court Of The United States:

Pursuant to Rule 44(7) California
Indian Legal Services (CILS), Amicus
Curiae, hereby respectfully moves this
Court for an order granting CILS fifteen
minutes of oral argument in addition to
the time allowed Respondents. Granting
this motion would provide assistance
otherwise unavailable to the Court.

The CILS brief discusses a number of issues besides those examined by Respondents, and CILS would present oral argument on the supplementary points. Those points include the significance of House and Senate rules to the appropriation process, the possibility that Congress (notwithstanding Ex Parte Endo, 323 U.S. 283) ratified BIA practice by a lump sum appropriation, the absence of on-reservation restrictions in the appropriations committees' reports, the basis for federal discrimination in favor of Indians as a factor in determining the constitutionality of discrimination against off-reservation Indians, and why affirming the court of appeals' decision would cost the states nothing, need not cost the federal government anything, and would entitle off-reservation Indians to share in only that portion

of BIA general assistance funds which exceeds what the BIA needs for paying reservation Indians the same amount of general assistance the states would pay those Indians if they lived off-reservation.

Another reason for granting this motion is the interest which CILS has in this case beyond the off-reservation residence in California of 85,000 Indians (a higher number than in any state except Oklahoma). CILS represents the plaintiffs in Croy v. Morton, Civil No. 5-2305, E.D. Cal. Those plaintiffs assert the right of off-reservation, rural, California Indians to share in the BIA's housing improvement program. Housing improvement, like general assistance, is part of the BIA welfare program funded under 25 U.S.C. \$13.

The district court has suspended all proceedings in Croy, which was filed December 22, 1971, pending the disposition of this case. Unless CILS can participate in this oral argument, the Croy plaintiffs will be denied a full voice in a case which will affect and may determine their rights to housing improvement benefits. If the Court were to reverse, even on very narrow grounds involving the history of the general assistance program, it would never-

theless have ennunciated a method for interpreting the Snyder and appropriation acts and would have obliterated the Croy plaintiffs' constitutional claims. CILS, counsel for the Croy plaintiffs, should therefore be granted leave to present oral argument.

Respondents are understandably unwilling to yield CILS part of their half hour oral argument, but Respondents have no objection to this motion. (See the letter of July 13, 1973, previously filed with this Court, from Lindsey Brew to Lee J. Sclar.) Dated: August 20, 1973

Respectfully submitted, Lee J. Sclar Bruce R. Greene Herbert A. Becker California Indian Legal Services

By:						
- 4	Lee	J.	Sc	lar		-

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#### IN THE

# Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1052

ROGERS C. B. MORTON, Secretary of the Interior, Petitioner,

v.

RAMON RUIZ and ANITA RUIZ, Respondents.

On Certiorari to the United States Court of Appeals for the Ninth Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE BRIEF OF AMICI CURIAE,

ARAPAHOE TRIBE OF WYOMING,
CONFEDERATED SALISH & KOOTENAI
TRIBES OF MONTANA,
HOOPA VALLEY TRIBE OF CALIFORNIA,
QUINAULT TRIBE OF WASHINGTON,
THREE AFFILIATED TRIBES OF
FORT BERTHOLD RESERVATION,
NORTH DAKOTA

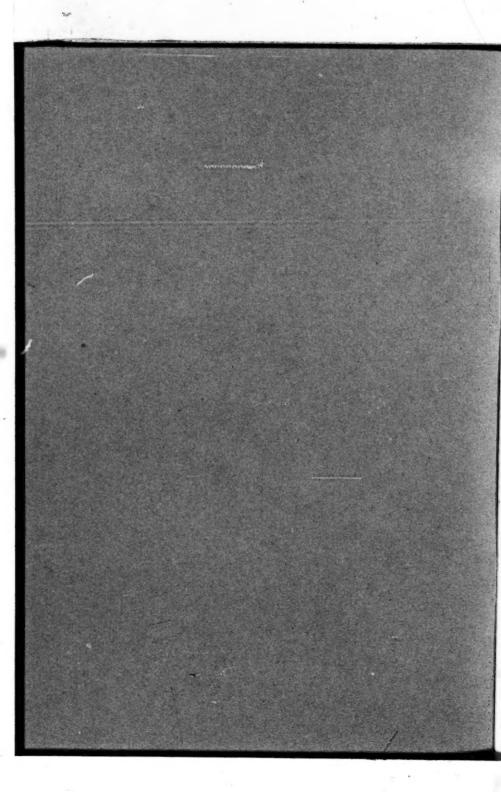
JERRY C. STRAUS

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WILKINSON, CRAGUN & BARKER
Of Counsel



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#### IN THE

# Supreme Court of the United States

OCTOBER TERM, 1973

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ROGERS C. B. MORTON, Secretary of the Interior, Petitioner,

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Respondents.

On Certiorari to the United States Court of Appeals for the Ninth Circuit

#### MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

Come now the Arapahoe Tribe of Wyoming, the Confederated Salish and Kootenai Tribes of Montana, the Hoopa Valley Tribe of California, the Quinault Tribe of Washington, and the Three Affiliated Tribes of the Fort Berthold Reservation of North Dakota, and respectfully move for leave to file the attached amici curiae brief. Amici have not obtained the consent of both parties to this filing.

We believe that the attached brief will be helpful to the Court. The interest of the movants is stated in the brief.

Respectfully submitted,

JERRY C. STRAUS

Counsel for Amici Curiae

1735 New York Avenue, N.W.

Washington, D. C. 20006

## In The Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1052

ROGERS C. B. MORTON, Secretary of the Interior, Petitioner,

v.

RAMON RUIZ and ANITA RUIZ, Respondents.

On Certiorari to the United States Court of Appeals for the Ninth Circuit

### BRIEF OF AMICI CURIAE,

ARAPAHOE TRIBE OF WYOMING,
CONFEDERATED SALISH & KOOTENAI
TRIBES OF MONTANA,
HOOPA VALLEY TRIBE OF CALIFORNIA,
QUINAULT TRIBE OF WASHINGTON,
THREE AFFILIATED TRIBES OF
FORT BERTHOLD RESERVATION,
NORTH DAKOTA

### I. STATEMENT OF INTEREST

The amici Indian tribes named above are all organized, self-governing tribes, recognized as such by the Secretary of the Interior. The tribes and their respective members

who live on the reservations receive general assistance benefits, as well as other aid, from the Secretary of the Interior and therefore have a vital interest in a determination as to whom the Secretary must pay such benefits. To the extent that the Secretary of the Interior must use his limited appropriated funds to provide general assistance payments for off-reservation Indians, members of the amici tribes living on the reservations will suffer. Your amici therefore support the Secretary of the Interior in urging this Court to reverse the decision of the Ninth Circuit Court of Appeals.

II. ALTHOUGH OFF-RESERVATION INDIANS ARE NOT PRECLUDED BY THE SNYDER ACT FROM RECEIVING GENERAL ASSISTANCE BENEFITS, CONGRESS HAS NOT APPROPRIATED ENOUGH MONEY FOR THIS PURPOSE.

Amici agree with respondents, Ramon and Anita Ruiz, to the extent that they assert that off-reservation Indians are not precluded from receiving general assistance benefits by the Snyder Act.<sup>1</sup> Amici contend, however, that Congress has neither appropriated enough money for this purpose, nor intended to do so.

The Snyder Act states in the broadest of terms that "[t]he Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States" for certain named purposes. As such, it was clearly intended as a general enabling act for a variety of programs administered by the Bureau of Indian Affairs for which Congress would appropriate money each year.

<sup>1 42</sup> Stat. 208, 25 U.S.C. § 13.

Congress appropriated only a very limited amount of money for the Bureau of Indian Affairs to provide a number of different educational and welfare services for Indians during 1968, the fiscal year in question. The Department of the Interior and Related Agencies Appropriation Act for 1968 2 states:

# BUREAU OF INDIAN AFFAIRS EDUCATION AND WELFARE SERVICES

For expenses necessary to provide education and welfare services for Indians, either directly or in cooperation with States and other organizations, including payment (in advance or from date of admission), of care, tuition, assistance, and other expenses of Indians in boarding homes, institutions, or schools; grants and other assistance to needy Indians; maintenance of law and order, and payment of rewards for information or evidence concerning violations of law on Indian reservations or lands; and operation of Indian arts and crafts shops; \$126,478,000.

Although this Act does not specify the beneficiaries of the general assistance program, its legislative history clearly manifests that no moneys were appropriated for off-reservation Indians. The hearings before both the House and Senate Committees contain a summary of the Bureau of Indian Affairs' requests for general assistance funds which state that, "General assistance will be provided to needy Indians on reservations who are not eligible for public assistance under the Social Security Act . . . and for whom such assistance is not available from established welfare agencies or through tribal resources." <sup>3</sup>

<sup>&</sup>lt;sup>2</sup> P.L. 90-28, 81 Stat. 59, 60.

<sup>&</sup>lt;sup>3</sup> Hearings on Department of Interior and Related Agencies Appropriations for 1968, H.R. 9029, before Subcomm. of the House Appropriations Comm., 90th Cong., 1st Sess., pt. 1, at 777 (1967) (emphasis added). Hearings on Department of Interior and Re-

The appropriated funds are scarce enough when it is considered that they are designed to provide a number of different programs for a reservation population of 213,770, according to the 1970 census.<sup>4</sup> If the same money must also cover general assistance benefits for all Indians living on or near reservations, i.e., all Indians under the Bureau of Indian Affairs jurisdiction which was estimated at 400,000 in 1968,<sup>5</sup> the amount available for all services for reservation Indians would obviously be greatly diminished, and its intended purposes be rendered virtually ineffective.

#### CONCLUSION

It may very well be that the Secretary of the Interior did not properly meet his responsibilities when he failed to request appropriations to provide general assistance benefits to urban Indians. It may also be true that the Congress was remiss in failing to provide the necessary appropriations. The plight of the urban Indian is a serious one and nothing in this brief is meant to imply that urban Indians should, as a matter of equity, necessarily be denied benefits merely because they have left their reservations. The fact remains, however, that Congress has not provided the money to do the job and desperately poor reservation Indians should not be placed in the position of having their plight significantly worsened by having available general assistance funds spread

lated Agencies Appropriations for 1968, H.R. 9029, before Sub-comm. of the Senate Appropriations Comm., 90th Cong., 1st Sess., pt. 1, at 695 (1967) (emphasis added).

<sup>&</sup>lt;sup>4</sup> United States Department of Commerce, Bureau of Census, 1970 Census of Population, American Indians, Table 17, at 190-91.

<sup>&</sup>lt;sup>5</sup> Hearings on Department of Interior and Related Agencies Appropriations for 1969, H.R. 17854, before Subcomm. of the Senate Appropriations Comm., 90th Cong., 2d Sess., at 368 (1968). The government's brief lists Department of the Interior 1972 estimates. Brief for Petitioner at 17.

among a much larger group than Congress intended or than the funds can decently provide for. Affirmance of the decision of the Court below would result in serious injustice and hardship to the needy Indian people of the reservations.

Amici curiae respectfully request that the judgment of the United States Court of Appeals for the Ninth Circuit be reversed.

Respectfully submitted,

JERRY C. STRAUS

Counsel for Amici Curiae

1735 New York Avenue, N.W.

Washington, D. C. 20006

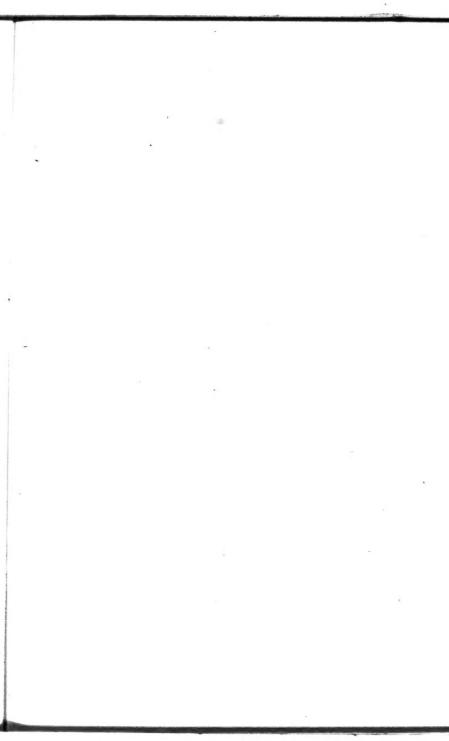
WILKINSON, CRAGUN & BARKER
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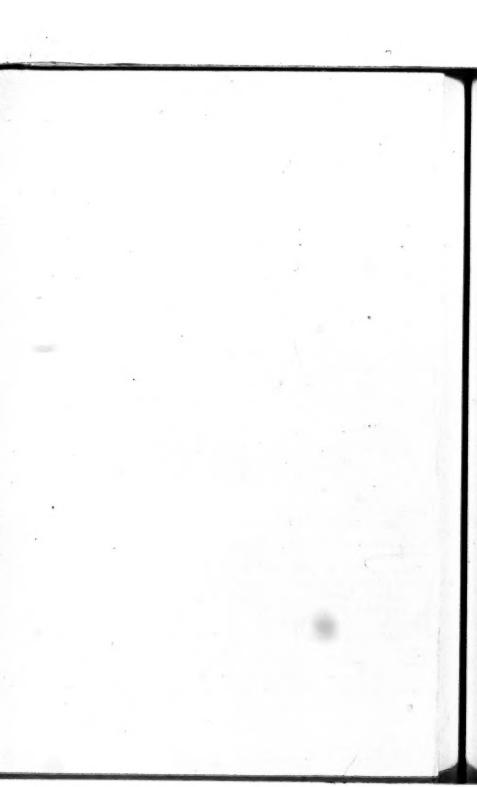
September 19, 1973

#### CERTIFICATE OF SERVICE

Motion and brief served this 19th day of September by mailing copies to the Solicitor General of the United States, Department of Justice, Washington, D. C. 20530, attorney for petitioner, and to Winton D. Woods, Jr., University of Arizona, College of Law, Tucson, Arizona 85721, and Lindsay E. Brew, P. O. Box 246, Sells, Arizona 85634, attorneys for respondents.

Jerry C. Straus





#### Syllabus

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# MORTON, SECRETARY OF THE INTERIOR v. RUIZ ET UX.

# CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR

No. 72-1052. Argued November 5-6, 1973— Decided February 20, 1974

Respondent Ruiz and his wife, Papago Indians, left their reservation in Arizona in 1940 to live in an Indian community a few miles away and Ruiz found employment at a nearby mine. During a prolonged strike, Ruiz applied for but was denied general assistance benefits under the Snyder Act by the Bureau of Indian Affairs (BIA) because of a provision in the BIA Manual limiting eligibility to Indians living "on reservations" (and in jurisdictions under the BIA in Alaska and Oklahoma). After unsuccessful administrative appeals, respondents instituted this purported class action, claiming, inter alia, entitlement to such general assistance as a matter of statutory interpretation. The District Court's summary judgment for petitioner was reversed by the Court of Appeals on the ground that the Manual's residency limitation was inconsistent with the broad language of the Snyder Act, that Congress intended general assistance benefits to be available to all Indians, including those in respondents' position, and that Congress' subsequent actions in appropriating funds for the BIA general assistance program did not serve to ratify the imposed limitation. Held:

1. Congress did not intend to exclude from the BIA general assistance program these respondents and their class, who are full-blooded, unassimilated Indians living in an Indian community near their native reservation, and who maintain close economic and social ties with that reservation. Pp. 212–230.

(a) The legislative history of the subcommittee hearings regarding appropriations under the Snyder Act showing that the BIA's usual practice has been to represent to Congress that "on or near" reservations is the equivalent of "on" for purposes of welfare service eligibility, and that successive budget requests were for Indians living "on or near" and not just for those living directly "on," clearly shows that Congress was led to believe that

the programs were being made available to those nonassimilated Indians living near the reservation as well as to those living "on," and a fair reading of such history can lead only to the conclusion that Indians situated near the reservation, such as respondents, were covered by the authorisation. Pp. 213-229.

- (b) The fact that Congress made appropriations during the time the "on reservations" limitation appeared in the BIA Manual does not mean that Congress implicitly ratified the BIA policy, where such limitation had not been published in the Federal Register or in the Code of Federal Regulations, and there is nothing in the legislative history to show that the limitation was brought to the appropriation subcommittees' attention, let alone to the entire Congress. But, even assuming that Congress knew of the limitation when making appropriations, there is no reason to assume that it did not equate the "on reservations" language with the "on or near" category that continuously was described as the service area. P. 230.
- Assuming, arguendo, that the Secretary rationally could limit the "on or near" appropriation to include only Indians who lived directly "on" the reservation (plus those in Alaska and Oklahoma), this has not been validly accomplished. Pp. 230-238.
- (a) By not publishing its general assistance eligibility requirement in the Federal Register or in the Code of Federal Regulations, the BIA has failed to comply with the requirements of the Administrative Procedure Act (APA) as to publication of substantive policies. The Secretary's conscious choice net to treat this extremely significant requirement as a legislative-type rule, renders it ineffective so far as extinguishing the rights of those otherwise within the class of beneficiaries contemplated by Congress. Pp. 232-236.
- (b) Moreover, the BIA has failed to comply with its own internal procedures, since the "on reservations" limitation is clearly an important substantive policy within the class of directives those that "inform the public of privileges and benefits available" and of "eligibility requirements"—that the BIA Manual declares are among those to be published. P. 235.
- (e) Even assuming the lack of binding effect of the BIA policy, it is too late to argue that the words "on reservations" in the BIA Manual mean something different from "on or near" and therefore are entitled to deference as an administrative interpreta-

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tion when, in fact, the two have been continuously equated by the BIA to Congress. Pp. 236-237.

462 F. 2d 818, affirmed and remanded, washing barden happened

BLACKMUN, J., delivered the opinion for a unanimous Court.

Harry R. Sachse argued the cause for petitioner. With him on the brief were Solicitor General Bork, Assistant Attorney General Johnson, Edmund B. Clark, and Carl Strass.

Winton D. Woods, Jr., argued the cause for respondents.
With him on the brief was Lindsay E. Brew.

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents a narrow but important issue in the administration of the federal general assistance program for needy Indians;

Are general assistance benefits available only to those Indians living on reservations in the United States (or in areas regulated by the Bureau of Indian Affairs in Alaska and Oklahoma), and are they thus unavailable to Indians (outside Alaska and Oklahoma) living off, although near, a reservation?

The United States District Court for the District of Arizona answered this question favorably to petitioner, the Secretary of the Interior, when, without opinion and on cross-motions for summary judgment, it dismissed the respondents' complaint. The Court of Appeals, one judge dissenting, reversed. 462 F. 2d 818 (CA9 1972). We granted certiorari because of the significance of the

\*Jerry C. Strong filed a brief for the Arapahoe Tribe of Wyoming

et al. as amici curine urging reversal.

Briefs of amici curine urging affirmance were filed by Lee-J. Sclar and Bruce R. Greene for the California Indian Legal Services, and by David H. Getches for the Native American Rights Fund.

issue and because of the vigorous assertion that the judgment of the Court of Appeals was inconsistent with long-established policy of the Secretary and of the Bureau. 411 U. S. 947 (1973).

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The pertinent facts are agreed upon, although, as to some, the petitioner Secretary denies knowledge but does not dispute them. App. 45-48. The respondents, Ramon Ruiz and his wife. Anita, are Papago Indians and United States citizens. In 1940 they left the Papago Reservation in Arizona to seek employment 15 miles away at the Phelps-Dodge copper mines at Ajo. Mr. Ruiz found work there, and they settled in a community at Ajo called the "Indian Village" and populated almost entirely by Papagos.2 Practically all the land and most of the homes in the Village are owned or rented by Phelps-Dodge. The Ruizes have lived in Ajo continuously since 1940 and have been in their present residence since 1947. A minor daughter lives with them. They speak and understand the Papago language but only limited English. Apart from Mr. Ruiz' employment with Elabourg living of different wing a section of the

<sup>&</sup>lt;sup>1</sup>The Papago Indian Reservation was established by Executive Orders Nos. 2300 and 2524, S. Doc. No. 53, 70th Cong., 1st Sess., 1008 and 1005, promulgated January 14, 1916, and February 1, 1917, respectively. Later adjustments therein appear to have been effected by the Act of June 28, 1926, 44 Stat. 775; by the Act of Feb. 21, 1931, 46 Stat. 1202; by the Act of July 28, 1937, 50 Stat. 536, 25 U. S. C. §§ 463a-463c; and by the Act of June 13, 1939, 53 Stat. 819. See also the Act of June 18, 1934, § 3, 48 Stat. See Papago Tribe v. United States, 19 Ind. Cl. Comm'n 394, 433-434 (1968).

<sup>&</sup>lt;sup>2</sup> Ajo is located within the borders of the Papago aboriginal tribal land. The Indian Claims Commission has found that this land was taken from the Papagos by the United States. *Papago Tribe* v. *United States*, 19 Ind. Cl. Comm'n, at 422–423, 426.

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Phelps-Dodge, they have not been assimilated into the dominant culture, and they appear to have maintained a close tie with the nearby reservation.

<sup>3</sup> The following material in the record indicates the close ties retained by the Ajo Indians with the Papago Reservation:

"[M]any of the Papagos [in the Indian Village at Ajo] still maintain and frequently visit homes on the reservation. Many still have cattle there and some even farm there. During the summer many wives and children spend long periods of time living on the reservation. Many of the miners attend reservation dances and other ceremonies, driving to the reservation after work ends in the afternoon and returning early the next morning to Ajo. Some miners still vote in the district elections on the reservation and many seek medical care there. Through the years many of the miners who have either been fired or laid off have returned to the reservation. Thus even some of the most 'acculturated' Ajo Indians still maintain very close ties to the reservation.

"During the prolonged strike of copper miners these ties were frequently strengthened and even extended. During this time of crisis, the members of the Indian Community often used the reservation as a place of refuge and occasionally as a source of food, money, and medical care." Affidavit of Larry R. Stucki, submitted in support of the respondents' motion for summary judgment. App.

84, 86-87.

As to the Ruizes in particular, it is said:

"[T]he whole family returned to South Komelik [on the reservation] during the whole month of August, 1967, and . . . they returned to South Komelik once or twice a month during the remainder of the strike, staying in Ajo only because one child, Mary Ann, was

still attending school there.

"Ramon Ruiz . . . still maintained his home in South Komelik and . . . he planned to return there in 4 years when he retires. He had never thought of Ajo as being his real home. His poor command of the English language, in spite of having lived in Ajo for 28 years, tended to confirm this. His son did much of the talking and interpreted for his father frequently . . . [W]hen the Ruiz' other son was killed in military service in Viet Nam, funeral services were held by the family in the church in Sells [on the reservation].

". . . The siren song of the reservation, in most cases, prevents the complete severance of the umbilical cord to the homeland of

these people." Id., at 87.

In July 1967, 27 years after the Ruizes moved to Ajo, the mine where he worked was shut down by a strike. It remained closed until the following March. While the strike was in progress, Mr. Ruiz' sole income was \$15 per week striker's benefit paid by the union. He sought welfare assistance from the State of Arizona but this was denied because of the State's apparent policy that striking workers are not eligible for general assistance or emergency relief.

On December 11, 1967, Mr. Ruiz applied for general assistance benefits from the Bureau of Indian Affairs (BIA). He was immediately notified by letter that he was ineligible for general assistance because of the provision (in effect since 1952) in 66 Indian Affairs Manual 3.1.4 (1965) that eligibility is limited to Indians living "on reservations" and in jurisdictions under the BIA in Alaska and Oklahoma. An appeal to the Superintend-

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<sup>&</sup>lt;sup>4</sup> Mr. Ruis so stated at the hearing referred to, infra, before the BIA Area Director. App. 11, 16. Mrs. Ruis at the same hearing stated that she worked about eight hours a week for \$1 an hour. App. 19.

<sup>&</sup>lt;sup>8</sup> See Ariz. Rev. Stat. Ann. § 46-233.A.4 (Supp. 1971-1972) reflecting the amendment by Laws 1962, c. 117, § 23. See also *Graham* v. *Richardson*, 403 U. S. 365 (1971).

Striking workers, however, are eligible for the State's Surplus Commodities Distribution Program. Mr. Ruiz was certified under this program for two successive 90-day periods. App. 49-50.

<sup>\*</sup>The Manual provides in pertinent part:

<sup>&</sup>quot;3.1 General Assistance.

<sup>&</sup>quot;.1 Purpose. The purpose of the general assistance program is to provide necessary financial assistance to needy Indian families and persons living on reservations under the jurisdiction of this Bureau and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma.

<sup>&</sup>quot;A Bligibility Conditions.

<sup>&</sup>quot;A. Residence. Eligibility for general assistance is limited to

ent of the Papago Indian Agency was unsuccessful. A further appeal to the Phoenix Area Director of the BIA led to a hearing, but this, too, proved unsuccessful. The sole ground for the denial of general assistance benefits was that the Ruizes resided outside the boundaries of the Papago Reservation.

The respondents then instituted the present purported class action against the Secretary, claiming, as a matter of statutory interpretation, entitlement to the general assistance for which they had applied, and also challenging the eligibility provision as a violation of Fifth Amendment due process and of the Privileges and Immunities Clause of Art. IV, § 2, of the Constitution.

The Court of Appeals' reversal of the District Court's summary judgment for the Secretary was on the ground that the Manual's residency limitation was inconsistent with the broad language of the Snyder Act, 25 U. S. C. § 13, "that Congress intended general assistance benefits to be available to all Indians, including those in the position" of the Ruizes, 462 F. 2d, at 821, and that subsequent actions of Congress in appropriating funds for the BIA general assistance program did not serve to ratify the imposed limitation. The dissent took the position that the Secretary's policy was within the broad discretionary authority delegated to the Secretary by Congress with respect to the allocation of limited funds.

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The Snyder Act, 42 Stat. 208, 25 U. S. C. § 13, approved November 2, 1921, provides the underlying con-

Indians living on reservations and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma."

The Snyder Act reads in full as follows:

<sup>&</sup>quot;The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys

gressional authority for most BIA activities including, in particular and importantly, the general assistance program. Prior to the Act, there was no such general authorization. As a result, appropriation requests made by the House Committee on Indian Affairs were frequently stricken on the House floor by point-of-order objections. See H. R. Rep. No. 275, 67th Cong., 1st Sess. (1921); S. Rep. No. 294, 67th Cong., 1st Sess. (1921): 61 Cong. Rec. 4659-4672 (1921). The Snyder Act was designed to remedy this situation. It is comprehensively worded for the apparent purpose of avoiding these point-of-order motions to strike. Since the passage of the Act, the BIA has presented its budget requests without further interruption of that kind and Congress has enacted appropriation bills annually in response to the requests, and a stand of the standard of t

The appropriation legislation at issue here, Department

as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for the following purposes:

<sup>&</sup>quot;General support and civilization, including education.

<sup>&</sup>quot;For relief of distress and conservation of health.

<sup>&</sup>quot;For industrial assistance and advancement and general administration of Indian property.

<sup>&</sup>quot;For extension, improvement, operation, and maintenance of existing Indian irrigation systems and for development of water supplies.

<sup>&</sup>quot;For the enlargement, extension, improvement and repair of the buildings and grounds of existing plants and projects.

<sup>&</sup>quot;For the employment of inspectors, supervisors, superintendents, clerks, field matrons, farmers, physicians, Indian police, Indian judges, and other employees.

<sup>&</sup>quot;For the suppression of traffic in intoxicating liquor and deleterious drugs.

<sup>&</sup>quot;For the purchase of horse-drawn and motor-propelled passengercarrying vehicles for official use.

<sup>&</sup>quot;And for general and incidental expenses in connection with the administration of Indian affairs."

of Interior and Related Agencies Appropriations Act, 1968, Pub. L. 90-28, 81 Stat. 59, 60 (1967), recited:

# "BUREAU OF INDIAN AFFAIRS

"Education and Welfare Services

"For expenses necessary to provide education and welfare services for Indians, either directly or in cooperation with States and other organizations, including payment (in advance or from date of admission), of care, tuition, assistance, and other expenses of Indians in boarding homes, institutions, or schools; grants and other assistance to needy Indians; maintenance of law and order, and payment of rewards for information or evidence concerning violations of law on Indian reservations or lands; and operation of Indian arts and crafts shops; \$126,478,000."

This wording, except for the amount, is identical to that employed in similar legislation for prior fiscal years and, indeed, for subsequent ones. It is to be noted that neither the language of the Snyder Act nor that of the Appropriations Act imposes any geographical limitation on the availability of general assistance conefits and does not prescribe eligibility requirements or the details of any program. Instead, the Snyder Act states that

<sup>\*</sup>See, for example, the Appropriations Act for fiscal 1967, Pub. L. 89-435, 80 Stat. 170, 171 (1966); the Act for fiscal 1966, Pub. L. 89-52, 79 Stat. 174, 175 (1965); and the Act for fiscal 1965, Pub. L. 88-356, 78 Stat. 273, 274 (1964).

<sup>&</sup>lt;sup>9</sup> See the Appropriations Act for fiscal 1969, Pub. L. 90-425, 82 Stat. 425, 427 (1968); the Act for fiscal 1970, Pub. L. 91-98, 83 Stat. 147, 148 (1969); the Act for fiscal 1971, Pub. L. 91-361, 84 Stat. 669, 670 (1970); the Act for fiscal 1972, Pub. L. 92-76, 85 Stat. 229, 230 (1971); the Act for fiscal 1973, Pub. L. 92-369, 86 Stat. 508, 509 (1972); and the Act for fiscal 1974, Pub. L. 93-120, 87 Stat. 429, 430-431 (1973).

the BIA (under the supervision of the Secretary) "shall direct, supervise, and expend . . for the benefit, care, and assistance of the Indians throughout the United States" for the stated purposes including, as the two purposes first described, "[g]eneral support" and "relief of distress." This is broadly phrased material and obviously is intended to include all BIA activities.

The general assistance program is designed by the BIA to provide direct financial aid to needy Indians where other channels of relief, federal, state, and tribal, are not available. Benefits generally are paid on a scale equivalent to the State's welfare payments. Any Indian, whether living on a reservation or elsewhere, may be eligible for benefits under the various social security programs in which his State participates and no limitation may be placed on social security benefits because of an Indian claimant's residence on a reservation.<sup>11</sup>

In the formal budget request submitted to Congress

<sup>&</sup>lt;sup>10</sup> A critic of the Act (who also represented the Ruizes in the administrative proceedings) describes it as follows: "The Synder Act is a familiar and somewhat distressing occurrence in the history of Indian affairs. As in other instances, Congress enacted a very general measure and left the rest up to the Secretary of the Interior and the BIA. The result is that the structure of the welfare system is the BIA's own creation. The regulatory scheme is contained in the departmental manual which remains inaccessible except to a few social workers and persistent attorneys" (footnote omitted). Wolf, Needed: A System of Income Maintenance for Indians, 10 Ariz. L. Rev. 597, 607-608 (1968).

<sup>&</sup>lt;sup>11</sup> See, for example, 42 U. S. C. § 1352 (b) (2). An Indian thus is entitled to social security and state welfare benefits equally with other citizens of the State. State ex rel. Williams v. Kamp, 106 Mont. 444, 449, 78 P. 2d 585, 587 (1938); U. S. Dept. of the Interior, Federal Indian Law 287, 516 (1958); Wolf, 10 Ariz. L. Rev., at 599.

by the BIA for fiscal 1968, the program was described as skylags, knominie follows:

"General assistance will be provided to needy Indians on reservations who are not eligible for public assistance under the Social Security Act . . . and for whom such assistance is not available from established welfare agencies or through tribal resources." Hearings on Department of the Interior and Related Agencies Appropriations for 1968 before a Subcommittee of the House Committee on Appropriations, 90th Cong., 1st Sess., 777-778 (1967),12 and Senate Hearings, Fiscal Year 1968, 90th Cong., 1st Sess., 695 (1967).12a ATH od: to real more than the minute of the

We are confronted, therefore, with the issues whether the geographical limitation placed on general assistance eligibility by the BIA is consistent with congressional intent and the meaning of the applicable statutes, or, to phrase it somewhat differently, whether the congressional appropriations are properly limited by the BIA's restric-

12 Hearings on the Department of the Interior and/or related agencies appropriations before subcommittees of the Senate or House Committee on Appropriations will be hereinafter merely identified as to branch of Congress, fiscal year, and number and session of Congress.

<sup>172</sup> The hearings for the preceding four years disclose identically worded requests. House Hearings, Fiscal Year 1967, 89th Cong., 2d Sess., 255 (1966), and Senate Hearings, Fiscal Year 1907, 89th Cong., 2d Sess., 267 (1966); House Hearings, Fiscal Year 1966, 89th Cong., 1st Sess., 747-748 (1965); and Senate Hearings, Fiscal Year 1966, 89th Cong., 1st Sess., 653 (1965); House Hearings, Fiscal Year 1965, 88th Cong., 2d Sess., 775 (1964); Senate Hearings, Fiscal Year 1965, 88th Cong., 2d Sess., 148 (1964); House Hearings, Fiscal Year 1964, 88th Cong., 1st Sess., 844 (1963), and Senate Hearings, Fiscal Year 1964, 88th Cong., 1st Sess., 70 (1963).

tions, and, if so, whether the limitation withstands constitutional analysis.

On the initial question, the Secretary argues, first, that the Snyder Act is merely an enabling act with no definition of the scope of the general assistance program, that the Appropriation Act did not provide for off-reservation Indian welfare (other than in Oklahoma and Alaska), and that Congress did not intend to expand the program beyond that presented to it by the BIA request. Secondly, he points to the "on reservations" limitation in the Manual and suggests that Congress was well acquainted with that limitation, and that, by legislating in the light of the Manual's limiting provision, its appropriation amounted to a ratification of the BIA's definitive practice. He notes that, in recent years, Congress has twice rejected proposals that clearly would have provided off-reservation general assistance for Indians.

(1962), and H. R. 6279, 88th Cong., 1st Sess. (1963). Each provided that benefits would be available to all Indians in certain

<sup>&</sup>lt;sup>19</sup> The BIA's limitation in practice surfaced at many hearings. See, for example, the testimony of Assistant Commissioner Gifford in 1959:

in 1959:

"I believe the question comes up concerning Indians living off the reservation and who are in need not for these categories but for other types of assistance. In many cases the States and counties say that those Indians ought to be the responsibility of the Bureau of Indian Affairs; that they do not have sufficient funds to take care of them. We have never included in our request for welfare appropriations funds to take care of the needs of those Indians living off the reservation." House Hearings, Fiscal Year 1960, 86th Cong., 1st Sess., 801 (1959) (emphasis supplied). See also Senate Hearings, Fiscal Year 1959, 85th Cong., 2d Sess., 291 (1958); Senate Hearings, Fiscal Year 1952, 82d Cong., 1st Sess., 372 (1951); Senate Hearings, Fiscal Year 1950, 81st Cong., 1st Sess., 592 (1949); Senate Hearings, Fiscal Year 1948, 80th Cong., 1st Sess., 598-599 (1947); Senate Hearings, Fiscal Year 1942, 77th Cong., 1st Sess., 160-162, 465-466 (1941).

14 The bills referred to were H. R. 9621, 87th Cong., 2d Sess.

Thus, it is said, Congress has appropriated no funds for general assistance for off-reservation Indians and, as a practical matter, the Secretary is unable to provide such a program.

The Court of Appeals placed primary reliance on the Snyder Act's provision for assistance to "the Indians throughout" the United States. It concluded that the Act envisioned no geographical limitations on Indian programs and that, absent a clear congressional ratification of such a policy, the Secretary was powerless to shrink the coverage down to some lesser group of Indian beneficiaries.

Although we affirm the judgment of the Court of Appeals and its reversal of the judgment of the District Court, we reach its result on a narrower ground. We need not approach the issue in terms of whether Congress intended for all Indians, regardless of residence and of the degree of assimilation, to be covered by the general assistance program. We need only ascertain the intent of Congress with respect to those Indian claimants in the case before us. The question, so limited, is whether Congress intended to exclude from the general assistance program these respondents and their class, who are full-blooded, unassimilated Indians living in an Indian community near their native reservation, and who maintain close economic and social ties with that reservation. Except for formal residence outside the physical

named States, and that the Government would reimburse the State for a percentage of the latter's contribution under the several categorical assistance programs. The failure of these bills can be ascribed just as easily, of course, to the rather arbitrary selection of States, to the specific percentage designated, or to a reluctance to provide for all Indians (rural or urban, assimilated or nonassimilated), as to the increase over the lesser group then being serviced. See United States v. Wise, 370 U. S. 405, 411 (1962); Order of Railway Conductors v. Swan, 329 U. S. 520, 529 (1947).

boundaries of the Papago Reservation, the respondents, as has been conceded, meet all other requirements for the general assistance program.

#### IV

There is, of course, some force in the Secretary's argument and in the facts that the BIA's budget requests consistently contained "on reservations" general assistance language and that there was testimony before successive appropriations subcommittees to the effect that assistance of this kind was customarily so restricted. Nonetheless, our examination of this and other material leads us to a conclusion contrary to that urged by the Secretary.

A. In actual practice, general assistance clearly has not been limited to reservation Indians. Indeed, the Manual's provision, see n. 6, supra, so heavily relied upon by the Secretary, itself provides that general assistance is available to nonreservation Indians in Alaska and Oklahoma. The rationale proffered for this is:

"The situation of Indians in Alaska and Oklahoma has historically been unique. Much of Oklahoma was once set aside as an Indian Territory, and though most of the reservations have been abolished, there remains a large area of concentrated Indian population with tribal organization, living on land held in trust by the United States . . . A similar situation of large concentrations of native Americans, with few reservations and substantial separate legislation prevails in Alaska . . . The responsibilities of the Bureau of Indian Affairs in these jurisdictions are substantially similar to the Bureau's responsibilities on the reservations." Brief for Petitioner 21.

While this exception is not necessarily irrational, it

definitely demonstrates that the limitation in the budget requests is not rigidly followed by the BIA, inasmuch as most off-reservation Indians in the two named States are regarded as eligible for general assistance funds. If, as the Secretary urges, we are to assume that Congress has been aware of the Manual's provision, Congress was just as clearly on notice that the words "on reservations" did not possess their literal meaning in that context. Surely, some of the reasons for the Alaska-Oklahoma exception are equally applicable to Indians of the Ruiz class.

B. There was testimony in several of the hearings that the BIA, in fact, was not limiting general assistance to those within reservation boundaries and, on more than one occasion, Congress was notified that exceptions were being made where they were deemed appropriate. Notwithstanding the Manual, at least three categories of off-reservation Indians outside Alaska and Oklahoma have been treated as eligible for general assistance. The first is the Indian who relocates in the city through the BIA relocation program and who then is eligible for general assistance for the period of time required for him, under state law, to establish residence in the new location.15 The second evidently is the Indian from the Turtle Mountain Reservation in North Dakota who lives on trust land near but apart from that reservation.16 The third appears to be the Indian residing in Rapid City, South Dakota,17

<sup>&</sup>lt;sup>15</sup> See, for example, Senate Hearings, Fiscal Year 1967, 89th Cong., 2d Sess., 302 (1966) (statement of Commissioner Nash); Senate Hearings, Fiscal Year 1959, 85th Cong., 2d Sess., 293 (1958) (statement of Deputy Commissioner Greenwood).

House Hearings, Fiscal Year 1961, 86th Cong., 2d Sess., 508-510
 (1960) (statement of Commissioner Emmons); Tr. of Oral Arg. 15.
 Senate Hearings, Fiscal Year 1967, 89th Cong., 2d Sess., 298-301
 (1966).

In addition, although not controlling, it is not irrelevant that the "on reservations" limitation in the budget requests has never appeared in the final appropriation bills.

C. Even more important is the fact that, for many years, to and including the appropriation year at issue, the BIA itself made continual representations to the appropriations subcommittees that nonurban Indians living "near" a reservation were eligible for BIA services. Although, to be sure, several passages in the legislative history and the formal budget requests have defined eligibility in terms of Indians living "on reservations," the BIA, not infrequently, has indicated that living "on or near" a reservation equates with living "on" it.

An early example of this appears at the fiscal 1948 Senate Hearing. The following colloquy between Senator McCarran and Assistant Commissioner Zimmerman is one of the stronger statements made to Congress concerning the BIA's policy of limiting general assistance to reservation Indians and yet, within this very dialogue, relied on explicitly by the Secretary, is an indication that "on reservations" is not given a rigid interpretation:

"Senator McCarran. I have one question right there.

"Do these items address themselves to reservation Indians or nonreservation Indians, or both?

"Take, for instance, this welfare administration fund, \$87,786. Is that given to reservation Indians, nonreservation Indians alike?

"Mr. Zimmerman. No, sir; it is not.

"Senator McCarran. To whom is it given?

"Mr. Zimmerman. This money goes to reservation Indians.

"Senator McCarran. Entirely?

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"Mr. Zimmerman. Yes.

"Senator McCarran. Now, in my State, for instance, you have in the outskirts of Reno and again on the outskirts of Battle Mountain small Indian villages. Do they get anything in the way of relief?

"Mr. Zimmerman. Those town colonies are treated

as reservations.

"Senator McCarran. You regard them as reservations?

"Mry Zimmerman. Yes; some of them are.

"Senator McCarran. Is the colony outside of the city of Reno a reservation?

"Mr. Zimmerman. For certain purposes the courts have held that it is a reservation.

"Senator McCarran. Do they own the land?

"Mr. Zimmerman. Yes; the Federal Government owns the land.

"Senator McCarran. The Federal Government owns the land?

"Mr. Zimmerman. Yes, sir.

"Senator McCarran. They build their houses on it or the Federal Government?

"Mr. Zimmerman. They build their own houses. "Senator McCarran. But those Indians do receive the benefits?

"Mr. Zimmerman. They would be eligible; yes, sir." Senate Hearings, Fiscal Year 1948, 80th Cong., 1st Sess., 598–599 (1947).

The interchangeability of "on" and "on or near" appears more directly in later years. In the relocation services section of the BIA's budget justification for fiscal 1959 it is stated:

"It is estimated that within the continental United States there are approximately 400,000 members of Indian tribes and bands. Of this number,

approximately 300,000 live on or adjacent to reservations for which the Bureau assumes some responsibility. On most of the Indian reservations there is a surplus of population in proportion to reservation resources. Opportunities for self-support on or near these reservations are wholly inadequate and the increasing surplus population is faced with the alternative of moving away from the reservation or remaining to live in privation or dependent, partially or wholly, upon some form of public assistance." Senate Hearings, Fiscal Year 1959, 85th Cong., 2d Sess., 288 (1958) (emphasis supplied).18

The relocation program is covered by the welfare appropriation. It is designed to provide short-term assistance to the needy Indian who leaves the reservation area and thereby disqualifies himself for the general assistance program. By describing the Indians who "live on or adjacent to reservations" as those entitled to relocation services when they depart, the BIA in effect was telling Congress that "moving away from the reservation" was a possibility even though the Indian lives only "adjacent to" the reservation, and it would seem to follow that the Indian living "adjacent to" the reservation was also eligible for general assistance.

At the fiscal 1962 hearing, Congressman Fenton inquired of Assistant Commissioner Gifford as to the Indian population in the United States. She replied:

"We have no absolute figure. Our best estimate of Indians on the reservations right now is about 375,000, I think. That is a figure we are using. Of course, there are Indians off of the reservations, and we do not have this count too clearly. How-

<sup>&</sup>lt;sup>18</sup> Identical language, apart from the population figures, appeared in later BIA budget requests. See, for example, House Hearings, Fiscal Year 1962, 87th Cong., 1st Sess., 116 (1961).

ever, for those we consider our direct responsibility on the reservations adjusting hersity as shift

"Mr. Fenton. To whom we contribute?

"Miss Gifford. Yes we believe it is about 375,000." House Hearings, Fiscal Year 1962, 87th Cong., 1st Sess., 205-206 (1961).

The foregoing statement by the Assistant Commissioner, of course, is not in itself particularly revealing on the issue that confronts us. As can be seen from subsequent hearings, however, the stated figure includes Indians "on or near the reservations" and is not restricted to Indians who live "on." Also, this "on or near" group, in contrast to those who live "off" the reservation, are within the group for whom the BIA assumed "direct responsibility." Obviously, one can never be certain whether this expanded reading of "on" is the result of the BIA's desire, when seeking appropriations, to represent its jurisdiction and function somewhat more broadly than it actually was, or whether it reflects actual policy.

The "on or near" representations continued to be made to Congress. At the fiscal 1963 House hearing, Congressmen questioned Commissioner Nash, Associate Commissioner Officer, and Assistant Commissioner Gifford as to the Indian population served by the BIA:

"Mr. Denton. How many Indians are there at the present time?

"Miss Gifford. You mean the total population? "Mr. Denton. Yes.

"Miss Gifford. We estimate that the total population on or near the reservations that we serve is 380,000.

"Mr. Denton. I expect there is no way you could tell how many Indians there are off the reservations. "Mr. Nash. Well, we can take the total census figure for the Indian population and subtract those that are listed as living on or near the reservations, and this gives us a figure of 172,000 off the reservations; 380,000 on or near the reservations, including Alaska.

"Mr. Kirwan. What did you say was on the reservation?

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"Mr. Nash. 380,000,

"Mr. Officer. We are citing our figure of 380,000 to include those Indians who live in the reservation vicinity and are eligible to receive our services, as well as the Indians and other Alaska natives. The total of Alaska natives is 43,000. When we subtract that from 380,000, we have 337,000 Indians who live on or near reservations outside Alaska. Now if we are going to be concerned only with those who live on reservations, then we have that figure of 285,000, which was in our press release.

"Mr. Kirwan. We want to clear that up. The press release emphasizes the 285,000 on the reservation. Now we have the figure on the reservation and those who live near the reservation. That is the point we want to clear.

"Mr. Officer. The 380,000 are those who live on or near reservations plus the natives of Alaska.

"Mr. Denton. That does include Eskimos?

"Mr. Officer. Yes, sir.

"Mr. Denton. What do you do in places like Oklahoma, where the Indians live 'checkerboard'?

"Mr. Officer. It is for that reason that we cite figures of Indians living on or near reservations; because we have a number of situations similar to those in Oklahoma, where you don't have a welldefined reservation boundary." House Hearings, Fiscal Year 1963, 87th Cong., 2d Sess., 352–354 (1962) (emphasis supplied).<sup>10</sup>

It is interesting to note that the Subcommittee was advised that Alaska and Oklahoma Indians are subsumed in the "on or near" category rather than placed in the pure "on" group, and, admittedly, they are entitled to general assistance. The figures stated also indicate that the number quoted the preceding year by Miss Gifford as the number "on the reservation" actually referred to those "on or near."

A nearly identical dialogue occurred in 1964 at the Senate Subcommittee:

"Senator Bible. How many Indians do you have under your jurisdiction?

"Mr. Nash. 380,000.

"Senator Bible. How many nonreservation Indians do you have? Are those just reservation Indians? "Mr. Nash. These are on or near. This would not include, for example, Indians living in Los Angeles, San Francisco, Chicago, Denver, Minneapolis, unless they were brought there as part of our vocational training or relocation programs.

"Senator Bible. What is the total Indian popula-

tion in the United States?

"Mr. Nash. The 1960 census counted 552,000 Indians, Eskimos, and Aleuts.

<sup>&</sup>lt;sup>19</sup> The next year the Commissioner made the following statement as to the scope of the BIA service area:

<sup>&</sup>quot;We have a need for services for 380,000 people. This includes those who are living directly on the reservations, and those who are living very close, so that the way in which they live affects reservations programs. They move back and forth, et cetera. We call this our 'Federal service to Indian population' and it is larger this year than last." House Hearings, Fiscal Year 1964, 88th Cong., 1st Sess., 889 (1963) (emphasis supplied).

"Chairman Hayden. Are these full-bloods or halfs?

"Mr. Nash. The census does not make an inquiry as to full or half. They merely say, 'Are you an Indian?' 'Are you known as an Eskimo?'

"Senator Bible. Following the Chairman's question, where does your jurisdiction rest in that regard? Do you have a measuring stick?

"Mr. Nash. No, sir. Our basis for providing services to an Indian is primarily on real estate. That is, we service those individuals who reside on trust or restricted land, or so close to it that the program of the reservation would be affected by services not performed for that person." Senate Hearings, Fiscal Year 1965, 88th Cong., 2d Sess., 227-228 (1964) (emphasis supplied).<sup>20</sup>

The now-familiar BIA representations appear again at the House hearing for fiscal 1967:

"Mr. Denton. How many Indians are there on the reservations and how many are under the Indian Bureau's supervision?

"Mr. Nash. We recognize what we call the Federal Indian Service population at 380,000.

"Mr. Denton. Are they on reservations?

"Mr. Nash. This is on and near. The figure on the reservation is somewhat smaller, but this is the figure which is of those who are on reservations, are living on trust lands, have titles which are alienated,

<sup>&</sup>lt;sup>20</sup> In the formal budget presented for fiscal 1966 the Commissioner introduced his statement with the following representation:

<sup>&</sup>quot;We are a modern service bureau, serving about 380,000 Indian persons and Alaska natives who live on or near reservations in 25 States. The services we perform are basically of three types." Senate Hearings, Fiscal Year 1966, 89th Cong., 1st Sess., 637 (1965) (emphasis supplied).

The third type there described consisted of welfare programs.

restricted against aliens, or are village communities in Alaska, Oklahoma, or are so near to reservations that they are dependent upon the facilities provided by the Bureau of Indian Affairs for their major community services.

"Mr. Denton. What is the total Indian population?

"Mr. Nash. The 1960 census counted 552,000. It would be from there up, because there are a good many people who——

"Mr. Denton. And 380,000 are on the reservations, so about 170,000 are not under the Govern-

ment's care.

"Mr. Nash. That is correct." House Hearings, Fiscal Year 1967, 89th Cong., 2d Sess., 370–371 (1966) (emphasis supplied).

At the hearing for fiscal 1968, the appropriation year directly at issue, Commissioner Bennett made like representations to the Senate Subcommittee. These could have led Congress to believe that there are only two relevant classes of Indians so far as non-land-related BIA services are concerned, those living "off" the reservation and those living "on or near":

"Senator Bible. . . . Mr. Commissioner, and I am sorry because you may have covered this in earlier questioning, but what is the total Indian population under your jurisdiction at the present time?

"Mr. Bennett. The total Indian population under our jurisdiction at the present time is 380,000. These are on or near reservations and comprise our service population based on the 1960 census.

"Senator Bible. How many Indians do we have in the United States who are not under your juris-

diction and are not your responsibility?

"Mr. Bennett. Based on the 1960 census again the figure is about 170,000. These are people who moved away from the residential areas and generally have become a part of other communities." Senate Hearings, Fiscal Year 1968, 90th Cong., 1st Sess., 819 (1967) (emphasis supplied).<sup>21</sup>

Another recurring representation made by the BIA throughout the annual hearings is that whenever it was asked about those Indians who were outside the agency's service area, that is, "off" the reservations, the answer would refer to Indians who had left the reservations and moved to urban areas or who had attempted to be assimilated by the general population. Certainly, none of the references to those outside the service area seem appropriately applied to Indians of the Ruiz class.

During the fiscal 1950 Senate hearing, when the question arose as to the status of Indians who had left the reservation, Assistant Commissioner Zimmerman stated:

"Frankly, it has not been considered the obligation of the Indian Service in the years past to police Indians after they have established themselves in Phoenix or Flagstaff or Grand Forks, or wherever it

<sup>&</sup>lt;sup>21</sup> The following year the Commissioner introduced his budget request with this statement:

<sup>&</sup>quot;We are a modern service Bureau, serving as many as 400,000 Indians and Alaskan natives who live on or near reservations—people who find themselves isolated from the mainstream of American life—existing in poverty. In keeping with the general governmental policy of attacking the causes of poverty and the lack of salable skills, the objective of the Bureau of Indian Affairs is to coordinate Federal programs and programs of State and local agencies which will improve educational, economic, social and political opportunities of Indians." House Hearings, Fiscal Year 1969, 90th Cong., 2d Sess., 575 (1968); Senate Hearings, Fiscal Year 1969, 90th Cong., 2d Sess., 368 (1968) (emphasis supplied).

may be." Senate Hearings, Fiscal Year 1950, 81st Cong., 1st Sess., 483 (1949).

At the fiscal 1952 hearing, the following exchange between Senator Young and Commissioner Myer gives some indication of what Congress had in mind with respect to Indian beneficiaries "leaving the reservation":

"Senator Young. . . . Is it true that, if an Indian leaves North Dakota to go out to the State of Washington to work, and if he runs out of work and runs out of money out there, . . . he is eligible for relief only if he is back on the reservation?

"Mr. Myer. No. If he has established residence, he is as eligible as anyone. I do not know what the situation is in the State of Washington, but some States would require a 2-year residence; some do not.

"Senator Young. Why could not an Indian get relief back there as well as on the reservation?

"Mr. Myer. That presents a problem that is a matter of very basic policy. That is a matter of whether or not we are going to extend our services to Indians wherever they are and follow them around the United States as they leave the reservation with the type of service we are providing on the reservation." Senate Hearings, Fiscal Year 1952, 82d Cong., 1st Sess., 372 (1951).

The following representation by Acting Commissioner Crow to the House Subcommittee in 1961 seems to indicate that general assistance, although tied to residence, is concerned with those Indians who have not been assimilated:

"The Bureau provides services and assists the states in furnishing services to Indians in the United States, including the natives of Alaska, in the fields of human and natural resources. This includes among other things programs of education, welfare, law and order, and the protection, development, and management of trust property. Services are, in general, limited to those arising out of our relationship regarding trust property and to those Indian people who reside on trust or restricted land. Funds are not included in these estimates for furnishing services to Indian people who have established themselves in the general society." House Hearings, Fiscal Year 1962, 87th Cong., 1st Sess., 98 (1961).

In the fiscal 1964 hearings, Commissioner Nash made the following statements indicating that "leaving the reservation" meant something far different from moving 15 miles to a nonurban Indian village while still maintaining close ties with the native reservation:

"The 1960 census showed 552,000 Indians, Eskimos and all others, all people defined as 'Indians' by the census. This would include those who have left reservations, gone to Los Angeles, San Francisco, Denver, Chicago, because they simply answered to the census taker, 'Yes, I am an Indian,' when they asked. We do not pretend to follow those people with services wherever they go.

"... We have a need for services for 380,000 people. This includes those who are living directly on the reservations, and those who are living very close, so that the way in which they live affects reservations programs." House Hearings, Fiscal Year 1964, 88th Cong., 1st Sess., 889 (1963) (emphasis supplied).

See also Senate Hearings, Fiscal Year 1967, 89th Cong., 2d Sess., 295-300 (1966).

It apparently was not until 1971, four years after the appropriation for fiscal 1968, that anyone in Congress seriously questioned the BIA as to its precise policy concerning the "off-on" dichotomy. The following dialogue between Senator Bible, long a member of the Senate Subcommittee, with Commissioner Bruce is instructive:

"Senator Bible. . . . What rule do you use to determine who is under your jurisdiction? Who is under the jurisdiction of the Bureau of Indian Affairs?

"Mr. Bruce. American Indians living on reservations, one-fourth degree blood or more living in the United States and Alaska.

"Senator Bible. One-fourth degree or more is one of the qualifications. They must also live on a reservation?

"Mr. Bruce. On or near.

"Senator Bible. What does the word 'near' mean?
"Mr. Bruce. It is very difficult to define. Near
reservation would be a nearby community.

"Senator Bible. Well, half a mile, 1 mile, 5 miles, 100 yards? I am just trying to find out what your jurisdiction is. You have some responsibilities. Now what are you responsible for?

"Mr. Bruce. They vary and that is why it is difficult to answer specifically.

"Senator Bible. Well, give me the variables then. From 100 yards up to 10 miles?

"Is that defined in a statute anywhere? If I was to become the Commissioner of Indian Affairs, God forbid, how would I know who I had jurisdiction over? They must make some determination.

"Mr. Bruce. There is a definition for Oklahoma, and Alaska.

"Senator Bible. What do your lawyers tell you? . . . Can you go into the heart of Manhattan and find some Indian with one-fourth degree of Indian blood? Do you have jurisdiction over him in the heart of Manhattan?

"Mr. Bruce. No, sir; not over Manhattan.

"Senator Bible. Well, if not over Manhattan, how about New York State? How about Troy or Syracuse or Rochester?

"Senator Bible. . . . I am just trying to get the record straight to see what your responsibility is for Indians beyond the reservation. I think we are clear for the Indians on the reservation."

At this point a recess was taken and the Commissioner was instructed to present the Committee with a more precise breakdown. The dialogue continued:

"Senator Bible. Do you have a breakdown for the Indians on the reservations and the number beyond Indian reservations? Can you give me figures on that?

"Mr. Bruce. Yes.

"Senator Bible. All right. What are they?

"Mr. Bruce. 477,000 on or near.

"Senator Bible. 477,000 on or near, and we still don't know what near is . . . .

"Now on or near. Beyond the 477,000 Indians on reservations or near a reservation, you have no further jurisdiction over Indians?

"Mr. Bruce. That is right.

"Senator Bible. That is your total responsibility?" Mr. Bruce. That is our total responsibility."

<sup>22</sup> The following additional information was supplied: "Population data

<sup>&</sup>quot;The statistical figure given for Indians living on and adjacent to reservations is based upon residence, and includes the following groups. The figures are for March 1970;

<sup>&</sup>quot;(a) 306,900 Indians resident within Federal reservation boundaries, excluding Alaska and Oklahoma, which are discussed below.

<sup>&</sup>quot;(b) 32,600 Indians resident nearby, who may receive services

"Senator Bible. Of the money that is in this budget, the \$408 million, how much of that will be expended within the reservations and how much beyond the reservations?

"Mr. Bruce. Our total budget is to be spent for the benefit of reservation Indians.

"Senator Bible. You are still tripping me up on that on or near business. I wish you would define that."

[At this point there was an exchange as to whether BIA services extend to Indians living in Chicago and other urban areas.]

"Senator Bible. . . . Now how many urban Indians do we have?

"Mr. Bruce. We are talking about more than 250,000.

"Senator Bible. 250,000?

"Mr. Bruce. Yes.

"Senator Bible. That is over and above the 477,458?

"Mr. Bruce. That is right.

because of their proximity and mobility. For example, Indians working in nearby towns frequently maintain close contact with reservation people and affairs; they may visit the reservation or return temporarily or permanently. Other Indians live on public domain allotments outside the reservation boundaries. The distance of such places is not spelled out, but depends on the extent of contact. Distant members of the tribe are not counted, although they may be carried on the tribal roll or the tribal census. See also comments below on the Navajo area.

"(c) 81,200 Indians resident in former reservation areas of Oklahoma. (This includes Osage, which has some attributes of a

reservation.)

"(d) 56,800 Alaska natives resident in Alaska. This includes Aleuts, and Eskimos as well as Indians." Senate Hearings, Fiscal Year 1972, 92d Cong., 1st Sess., 752–753 (1971).

See n. 3, supra.

"Senator Bible. And these are the difficulties that you have encountered in also a rather lengthy resume of some of the services that you perform for them as to your responsibility for the 250,000.

"Where do you find these 250,000 nonreservation Indians?

"Mr. Bruce. Living in urban cities—Los Angeles, San Francisco, Chicago, St. Louis, Cleveland, Denver, Minneapolis." Senate Hearings, Fiscal Year 1972, 92d Cong., 1st Sess., 751–756 (1971).<sup>23</sup>

Although most of these passages refer to the BIA's overall jurisdiction and not to the scope of the general assistance program, there is nothing to indicate that general assistance would not be made available for all within the service area. Unlike programs such as law enforcement and land projects, general assistance is not tied inherently or logically to the physical boundaries of the reservation. And programs, such as relocation, that explicitly extend beyond the reservation are not limited to "on or near." So it is difficult to ascertain precisely what relevance the "on or near" category would have if it did not relate to programs such as general assistance. Nowhere in the hearings had the BIA ever indicated which non-land-oriented programs are available to those "on" as opposed to those "on or near," and the only conclusion that is to be drawn from the representations

<sup>&</sup>lt;sup>23</sup> Beginning with the fiscal 1973 hearings, there appeared a wide outpouring for BIA assistance for urban Indians. In the Appropriations Committee Report to the Senate for fiscal 1973, submitted by Senator Bible, the following language appears, indicating the Senate's earlier understanding that although the BIA program did not cover urban Indians, it did cover those "on or near" the reservations:

<sup>&</sup>quot;The Committee directs that the Secretary prepare a plan to assure Bureau of Indian Affairs type services to all Indians in the United States—rather than just to those living 'on or near reservations.'" S. Rep. No. 92-921, p. 6 (1972).

to Congress is that those Indians who fit the "on or near" category are eligible for all BIA services not directly tied to the physical boundaries.

Thus, the usual practice of the BIA has been to represent to Congress that "on or near" is the equivalent of "on" for purposes of welfare service eligibility, and that the successive budget requests were for a universe of Indians living "on or near" and not just for those living directly "on." In addition, the BIA has continually treated persons "off" the reservations as not "on or near." In the light of this rather consistent legislative history. it is understandable that the Secretary now argues that general assistance has not been available to those "off" the reservation. We do not accept the argument, however, that the history indicates that general assistance was thereby restricted to those within the physical boundaries. To the contrary, that history clearly shows that Congress was led to believe that the programs were being made available to those unassimilated needy Indians living near the reservation as well as to those living "on." Certainly, a fair reading of the congressional proceedings up to and including the fiscal 1968 hearing can lead only to the conclusion that Indians situated near the reservation, such as the Ruizes, were covered by the authorization.24

<sup>&</sup>lt;sup>24</sup> This conception as to the BIA's jurisdiction seems not to have been limited to Congress. Curiously enough, in the application, filed with this Court, for an extension of time within which to file the petition for certiorari in this case, the Solicitor General described the litigation:

<sup>&</sup>quot;The court of appeals has held in this case that Indian welfare benefits administered by the Department of the Interior under the Snyder Act of 1921, 25 U. S. C. 13, must be provided not only to Indians living on or near reservations, as has been the practice of the Department of the Interior for many years, but must also be made available to Indians residing anywhere in the country" (emphasis supplied).

D. Wholly aside from this appropriation subcommittee legislative history, the Secretary suggests that Congress, each year since 1952, appropriated only in accord with the "on reservations" limitation contained in the BIA Manual. By legislating annually "in the light of [this] clear provision," the Secretary argues, Congress implicitly ratified the BIA policy. This argument, also, is not convincing. The limitation has not been published in the Federal Register or in the Code of Federal Regulations, and there is nothing in the legislative history to show that the Manual's provision was brought to the subcommittees' attention, let alone to the entire Congress. To assume that Congress was aware of this provision, contained only in an internally circulated BIA document, would be most strained. But, even assuming that Congress was fully cognizant of the Manual's limitation when the 1958 appropriation was made, the language of geographic restriction in the Manual must be considered in conjunction with the representations consistently made. There is no reason to assume that Congress did not equate the "on reservations" language with the "on or near" category that continuously was described as the service area. In the light of the Manual's particular inclusion of Oklahoma and Alaska off-reservation Indians, it would seem that this interpretation of the provision would have been the logical one for anyone in Congress, who in fact was aware of it, to accept.

#### V

A. Having found that the congressional appropriation was intended to cover welfare services at least to those Indians residing "on or near" the reservation, it does not necessarily follow that the Secretary is without power to create reasonable classifications and eligibility requirements in order to allocate the limited funds available to him for this purpose. See Dandridge v. Williams,

397 U. S. 471 (1970); Jefferson v. Hackney, 406 U. S. 535 (1972). Thus, if there were only enough funds appropriated to provide meaningfully for 10,000 needy Indian beneficiaries and the entire class of eligible beneficiaries numbered 20,000, it would be incumbent upon the BIA to develop an eligibility standard to deal with this problem, and the standard, if rational and proper, might leave some of the class otherwise encompassed by the appropriation without benefits. But in such a case the agency must, at a minimum, let the standard be generally known so as to assure that it is being applied consistently and so as to avoid both the reality and the appearance of arbitrary denial of benefits to potential beneficiaries.

Assuming, arguendo, that the Secretary rationally could limit the "on or near" appropriation to include only the smaller class of Indians who lived directly "on" the reservation plus those in Alaska and Oklahoma, the question that remains is whether this has been validly accomplished. The power of an administrative agency to administer a congressionally created and funded program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress. In the area of Indian affairs, the Executive has long been empowered to promulgate rules and policies, 25 and the power has been given explicitly to the Secretary and his delegates at the BIA.26

<sup>&</sup>lt;sup>25</sup> "The President may prescribe such regulations as he may think fit for carrying into effect the various provisions of any act relating to Indian affairs, and for the settlement of the accounts of Indian affairs." 25 U. S. C. § 9. This provision relates back to the Act of June 30, 1834, § 17, 4 Stat. 738.

<sup>&</sup>lt;sup>26</sup> "The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations." 25 U. S. C.

This agency power to make rules that affect substantial individual rights and obligations carries with it the responsibility not only to remain consistent with the governing legislation, FMC v. Seatrain Lines, Inc., 411 U. S. 726 (1973); Dixon v. United States, 381 U. S. 68, 74 (1965); Brannan v. Stark, 342 U. S. 451 (1952), but also to employ procedures that conform to the law. See NLRB v. Wyman-Gordon Co., 394 U. S. 759, 764 (1969) (plurality opinion). No matter how rational or consistent with congressional intent a particular decision might be, the determination of eligibility cannot be made on an ad hoc basis by the dispenser of the funds.

The Administrative Procedure Act was adopted to provide, inter alia, that administrative policies affecting individual rights and obligations be promulgated pursuant to certain stated procedures so as to avoid the inherently arbitrary nature of unpublished ad hoc determinations. See generally S. Rep. No. 752, 79th Cong., 1st Sess., 12-13 (1945); H. R. Rep. No. 1980, 79th Cong., 2d Sess., 21-23 (1946). That Act states in pertinent part:

"Each Agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general appli-

<sup>§ 2.</sup> This relates back to the Act of July 9, 1832, § 1, 4 Stat. 564.

The Snyder Act provides:

<sup>&</sup>quot;The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate . . . ." 25 U. S. C. § 13.

cability formulated and adopted by the agency."

5 U. S. C. § 552 (a)(1).

The sanction added in 1967 by Pub. L. 90-23, 81 Stat. 54, provides:

"Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published." Ibid.<sup>27</sup>

In the instant case the BIA itself has recognized the necessity of formally publishing its substantive policies and has placed itself under the structure of the APA procedures. The 1968 introduction to the Manual reads:

"Code of Federal Regulations: Directives which relate to the public, including Indians, are published in the Federal Register and codified in 25 Code of Federal Regulations (25 CFR). These directives inform the public of privileges and benefits available; eligibility qualifications, requirements and procedures; and of appeal rights and procedures. They are published in accordance with rules and regulations issued by the Director of the Federal Register and the Administrative Procedure Act as amended. . . .

<sup>&</sup>lt;sup>27</sup> The House report accompanying this provision stated:

<sup>&</sup>quot;An added incentive for agencies to publish the necessary details about their official activities in the Federal Register is the provision that no person shall be 'adversely affected' by material required to be published—or incorporated by reference—in the Federal Register but not so published." H. R. Rep. No. 1497, 89th Cong., 2d Sess., 7 (1966). See S. Rep. No. 813, 89th Cong., 1st Sess., 6 (1965); S. Rep. No. 1219, 88th Cong., 2d Sess., 12 (1964).

"Bureau of Indian Affairs Manual: Policies, procedures, and instructions which do not relate to the public but are required to govern the operations of the Bureau are published in the Bureau of Indian Affairs Manual." 0 BIAM 1.2.

Unlike numerous other programs authorized by the Snyder Act and funded by the annual appropriations, the BIA has chosen not to publish its eligibility requirements for general assistance in the Federal Register or in the CFR. This continues to the present time.<sup>28</sup> The

28 Title 25 CFR (1973), on the subject of "Indians," contains regulations and sets forth eligibility requirements for law-and-order programs (pt. 11); care of Indian children in contract schools (pt. 22); federal schools for Indians (pt. 31); administration of educational loans, grants and other assistance for higher education (pt. 32); enrollment of Indians in public schools (pt. 33); administration of a program of vocational training for adult Indians (pt. 34); and general credit to Indians (pt. 91). The only reference to welfare activities is Subchapter D, entitled "Social Welfare" and comprising pts. 21 and 22. Part 21 relates to the program under which the Commissioner "may negotiate with State, territory, county or other Federal welfare agencies for such agencies to provide welfare services as contemplated" by 25 U. S. C. § 452. The regulations state that the program applies to "Indians residing within a particular State within the exterior boundaries of Indian reservations under the jurisdiction of the Bureau of Indian Affairs or on trust or restricted lands under the jurisdiction of the Bureau of Indian Affairs." 25 CFR § 21.1 (1973). But see 25 U.S. C. § 309 and 25 CFR § 34.3, where vocational training for adult Indians is also made available "to additional Indians who reside near reservations in the discretion of the Secretary of the Interior when the failure to provide the services would have a direct effect upon Bureau programs within the reservation boundaries" (emphasis supplied). See also 25 CFR 8 31.1.

The phrase "within the exterior boundaries of Indian reservations under the jurisdiction of the Bureau of Indian Affairs," when read in conjunction with the BIA's declared jurisdiction before Congress, would seem to include Indians living "near" the reservations. In any event, the cited regulations do not deal with the general

only official manifestation of this alleged policy of restricting general assistance to those directly on the reservations is the material in the Manual which is, by BIA's own admission, solely an internal-operations brochure intended to cover policies that "do not relate to the public." Indeed, at oral argument the Government conceded that for this to be a "real legislative rule," itself endowed with the force of law, it should be published in the Federal Register. Tr. of Oral Arg. 20.

Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required. Service v. Dulles, 354 U. S. 363, 388 (1957); Vitarelli v. Seaton, 359 U. S. 535, 539-540 (1959). The BIA, by its Manual, has declared that all directives that "inform the public of privileges and benefits available" and of "eligibility requirements" are among those to be published. The requirement that, in order to receive general assistance, an Indian must reside directly "on" a reservation is clearly an important substantive policy that fits within this class of directives. Before the BIA may extinguish the entitlement of these otherwise eligible beneficiaries, it must comply, at a minimum, with its own internal procedures

The Secretary has presented no reason why the requirements of the Administrative Procedure Act could not or should not have been met. Cf. SEC v. Chenery Corp., 332 U. S. 194, 202 (1947). The BIA itself has not attempted to defend its rule as a valid exercise of its "legislative power," but rather depends on the argument that Congress itself has not appropriated funds for

assistance program. There is nothing in the Code indicating that a general assistance program exists, to say nothing of the absence of eligibility criteria.

Indians not directly on the reservations. The conscious choice of the Secretary not to treat this extremely significant eligibility requirement, affecting rights of needy Indians, as a legislative-type rule, renders it ineffective so far as extinguishing rights of those otherwise within the class of beneficiaries contemplated by Congress is concerned.

The overriding duty of our Federal Government to deal fairly with Indians wherever located has been recognized by this Court on many occasions. See, e. g., Seminole Nation v. United States, 316 U. S. 286, 296 (1942): Board of County Comm'rs v. Seber, 318 U. S. 705 (1943). Particularly here, where the BIA has continually represented to Congress, when seeking funds, that Indians living near reservations are within the service area, it is essential that the legitimate expectation of these needy Indians not be extinguished by what amounts to an unpublished ad hoc determination of the agency that was not promulgated in accordance with its own procedures, to say nothing of those of the Administrative Procedure Act. The denial of benefits to these respondents under such circumstances is inconsistent with "the distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people." Seminole Nation v. United States, 316 U. S., at 296; see Squire v. Capoeman, 351 U. S. 1 (1956). Before benefits may be denied to these otherwise entitled Indians, the BIA must first promulgate eligibility requirements according to established procedures.

B. Even assuming the lack of binding effect of the BIA policy, the Secretary argues that the residential restriction in the Manual is a longstanding interpretation of the Snyder Act by the agency best suited to do this, and that deference is due its interpretation. See Griggs v. Duke Power Co., 401 U. S. 424, 433-434 (1971).

The thrust of this argument is not that the regulation itself has created the "on" and "near" distinction, but that Congress has intended to provide general assistance only to those directly on reservations, and that the Manual's provision is simply an interpretation of congressional intent. As we have already noted, however, the BIA, through its own practices and representations, has led Congress to believe that these appropriations covered Indians "on or near" the reservations, and it is too late now to argue that the words "on reservations" in the Manual mean something different from "on or near" when, in fact, the two have been continuously equated by the BIA to Congress.

We have recognized previously that the weight of an administrative interpretation will depend, among other things, upon "its consistency with earlier and later pronouncements" of an agency. Skidmore v. Swift & Co., 323 U. S. 134, 140 (1944). See generally 1 K. Davis. Administrative Law Treatise §§ 5.03-5.06 (1958 ed. and Supp. 1970). In this instance the BIA's somewhat inconsistent posture belies its present assertion. In order for an agency interpretation to be granted deference, it must be consistent with the congressional purpose. Espinoza v. Farah Mfg. Co., 414 U. S. 86 (1973); Red Lion Broadcasting Co. v. FCC, 395 U. S. 367, 381 (1969). It is evident to us that Congress did not itself intend to limit its authorization to only those Indians directly on, in contrast to those "near," the reservation, and that, therefore, the BIA's interpretation must fail.

We emphasize that our holding does not, as was suggested at oral argument, Tr. of Oral Arg. 3, 5, and in the Brief for Petitioner 2, make general assistance available to all Indians "throughout the country." Even respondents do not claim this much. Brief for Respondents 23;

Tr. of Oral Arg. 28. The appropriation, as we see it, was for Indians "on or near" the reservation. This is broad enough, we hold, to include the Ruizes who live where they found employment in an Indian community only a few miles from their reservation, who maintain their close economic and social ties with that reservation, and who are unassimilated. The parameter of their class will be determined, to the extent necessary, by the District Court on remand of the case. Whether other persons qualify for general assistance will be left to cases that arise in the future.

In view of our disposition of the statutory issue, we do not reach the respondents' constitutional arguments. We intimate no views as to them.

The judgment of the Court of Appeals is affirmed and the case is remanded for further proceedings consistent with this opinion.

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It is so ordered.

